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(Exceeds 100 pages)

Filed: 12/19/2011

Title: REDACTED TRANSCRIPT DEPOSITION OF
JOHN SAUNDERS AND EXHIBITS.

Part 1 of 2

91195943

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Justin C. Crawford
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December 15, 2011

Via U.S. Mail

United States Patent and Trademark Office
Trademark Trial and Appeal Board
Attn: Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Re: *Integrated Management Information, Inc. v. Frank Barrie*
Opposition No. 91195943

#77883973

Dear Commissioner:

Enclosed for filing please find the certified transcripts and accompanying exhibits for the deposition of John Saunders taken on November 17, 2011, for the above-captioned matter. You will notice that one package has the confidential portions of the transcript along with the exhibits marked as "Trade Secret / Commercially Sensitive".

Please feel free to contact me with any questions or concerns.

Sincerely

HOVEY WILLIAMS LLP


By



Justin C. Crawford
Litigation Paralegal

CLB:jcc
Enclosures

Cc: Frank W. Barrie (via U.S. mail with enclosures)


12-19-2011

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTEGRATED MANAGEMENT
INFORMATION, INC.,

Opposer,

Opposition No. 91195943

vs.

Serial No. 77/883,973

FRANK BARRIE,

Applicant.

~~~~~

**REDACTED TRANSCRIPT**

**DEPOSITION OF**

**JOHN SAUNDERS**

November 17, 2011  
9:33 a.m.

84 Corporate Woods  
Suite 1000  
10801 Mastin Boulevard  
Overland Park, KS

JUDY K. MOORE, CSR #1201



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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTEGRATED MANAGEMENT                    )  
INFORMATION, INC.,                        )  
                    Opposer,                ) Opposition No. 91195943  
vs.                                                ) Serial No. 77/883,973  
FRANK BARRIE,                                )  
                    Applicant.                )

DEPOSITION OF JOHN SAUNDERS  
TAKEN ON BEHALF OF THE OPPOSER

NOVEMBER 17, 2011

(Start time: 9:33 a.m.)



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## I N D E X

## WITNESS:

## PAGE:

JOHN SAUNDERS

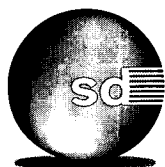
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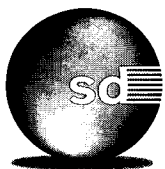
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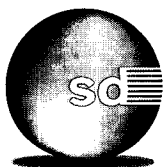
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

INTEGRATED MANAGEMENT                    )  
INFORMATION, INC.,                        )  
                                  Opposer,                    )Opposition No. 91195943  
vs.                                                )Serial No. 77/883,973  
FRANK BARRIE,                                )  
                                  Applicant.                    )

DEPOSITION of JOHN SAUNDERS, produced, sworn  
and examined on November 17, 2011, between the hours  
of 9:30 o'clock in the forenoon and 1:00 o'clock in  
the afternoon of that day, at the law offices of Hovey  
Williams, L.L.P., 10801 Mastin Boulevard, Overland  
Park, Kansas 66210, before Judy K. Moore, a Certified  
Court Reporter within and for the State of Kansas, in  
a certain cause now pending in the United States  
Patent and Trademark Office, Before the Trademark  
Trial and Appeal Board, wherein INTEGRATED MANAGEMENT  
INFORMATION, INC., is The Opposer and FRANK BARRIE is  
The Applicant.



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A P P E A R A N C E S

For The Opposer:

MS. CHERYL L. BURBACH

Hovey Williams, L.L.P.

10801 Mastin Boulevard, Suite 1000

Overland Park, Kansas 66210

(913) 647-9050

Clb@hoveywilliams.com

For The Applicant: (via telephone)

MR. FRANK W. BARRIE

Attorney at Law

117 South Pine Avenue

Albany, New York 12208

Fbarrie@nycap.rr.com

Reporter: Judy K. Moore, RPR, CCR, CSR



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1                   IT IS HEREBY STIPULATED AND AGREED, by and  
2           between counsel for the Opposer and counsel for the  
3           Applicant that this deposition may be taken in  
4           shorthand by Judy K. Moore, a Certified Court  
5           Reporter, and afterwards transcribed into printing,  
6           and the signature of the witness is expressly  
7           reserved.

8                   \* \* \* \* \*

9                   JOHN SAUNDERS,  
10          of lawful age, produced, sworn and examined on behalf  
11          of The Opposer, deposes and says:

12                   DIRECT EXAMINATION  
13          QUESTIONS BY MS. BURBACH:

14                  Q.     Good morning, Mr. Saunders. We are here  
15          today to take your testimonial deposition. Do you  
16          understand that?

17                  A.     Yes, ma'am.

18                  Q.     We are here in a case involving a case  
19          before the United States Trademark Trial and Appeal  
20          Board, Integrated Management Information, Inc., who's  
21          The Opposer, versus Frank Barrie, The Applicant, and  
22          there will be times in which we'll designate portions  
23          of the transcript confidential. We'll mark those as  
24          we go.

25                               To begin with, could you please give your



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1 full name.

2 A. John Kenneth Saunders.

3 Q. And do you understand that the purpose of a  
4 testimonial deposition is to record facts known by you  
5 today?

6 A. Yes.

7 Q. Everything that we do today will be taken  
8 down by a court reporter, and it's important that we  
9 not speak over each other and let each other finish  
10 speaking. Do you understand that?

11 A. Yes.

12 Q. You understand that you are under oath  
13 today?

14 A. Yes.

15 Q. And that you're required to tell the truth?

16 A. Yes.

17 Q. And that this is similar to though you were  
18 at trial presenting your case. You understand that?

19 A. Yes.

20 Q. Is there anything which would prevent you  
21 from giving clear and honest testimony?

22 A. No.

23 Q. If I ask you a question and you don't  
24 understand it, feel free to ask me to rephrase it.

25 Okay?



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1 A. Okay.

2 (Whereupon, Deposition Exhibit No. 1,  
3 Deposition Notice, was marked for identification.)

4 Q. (By Ms. Burbach) Let's begin by looking at  
5 Exhibit 1. I'm going to hand that to you and ask you  
6 to identify Exhibit 1, please.

7 A. This is the notice of trial deposition for  
8 myself in the case, in the...

9 Q. In the proceeding?

10 A. In the proceeding.

11 Q. And you understand you're here by virtue of  
12 this notice today?

13 A. Yes.

14 Q. Okay. I'm just going to put your exhibits  
15 here.

16 Why don't we begin by you giving your  
17 residential address.

18 A. I live at 5521 Lake Gulch Road in Castle  
19 Rock, Colorado.

20 Q. And can you tell us a little bit about your  
21 educational background?

22 A. I grew up in northwest Ohio, completed high  
23 school and then attended Yale University in New Haven,  
24 Connecticut, graduated in May of 1994 with a double  
25 major, Bachelor of Arts in history and a Bachelor of



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1 Science in environmental studies.

2 Q. Okay. And I think you've already answered  
3 that. Have you had any post-graduate education or  
4 training?

5 A. I have not.

6 Q. Are you currently employed?

7 A. I am.

8 Q. And who is your current employer?

9 A. My employer is Integrated Management  
10 Information, Inc., d/b/a IMI Global.

11 Q. And what is the address of the employer?

12 A. 221 Wilcox Street in Castle Rock, Colorado.

13 Q. What is your title or position with IMI?

14 A. I am the founder, Chairman of the Board and  
15 Chief Executive Officer.

16 Q. And have you ever had any other positions  
17 at that company?

18 A. I have not.

19 Q. In those positions, what are your duties or  
20 responsibilities?

21 A. The oversight, the management of the  
22 company, strategic vision, thought processes, high-end  
23 sales. We're also a publicly-traded company, so  
24 investor interface relations and overall management of  
25 the company.



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1 Q. Okay. Are you involved with trying to  
2 develop business for the company?

3 A. Always.

4 Q. Do you engage in business development  
5 activities?

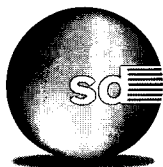
6 A. Yes.

7 Q. Can you give me an example what those would  
8 be?

9 A. Specific examples would include all  
10 high-end sales. And high-end sales is something that,  
11 for example, all retail food service distribution  
12 companies that we interact with I am the lead salesman  
13 and development for development of those  
14 relationships. High-end management of that -- that  
15 relationship.

16 And then also interfaced with government  
17 organizations. So we work very efficiently and often  
18 with the United States Department of Agriculture in  
19 Washington and on a state basis in Colorado and  
20 maintaining those relationships, understanding current  
21 regulations, requirements for our customers and their  
22 ability to comply with regulations necessary to sell  
23 food products, both here in the United States and  
24 abroad.

25 Q. Okay. Are you also involved in the



1 marketing promotion of your services with your  
2 company?

3 A. Yes.

4 Q. And can you speak to what that would be  
5 like?

6 A. Marketing promotion of our services,  
7 especially now, is on a consumer basis. So television  
8 appearances, newspaper interviews, any type of social  
9 media interaction that could potentially be requested  
10 of the direction of the company and where we're going.  
11 Trying to understand trends in the market, consumer  
12 ideas, perceptions of food and how that -- how that  
13 affects the people that are producing that food.

14 Q. Do you also participate in brand  
15 development for your company?

16 A. Yes.

17 Q. Do you actively participate in deciding  
18 which brands your company uses to promote its goods  
19 and services?

20 A. Most definitely.

21 Q. Are you a member of any professional  
22 organizations?

23 A. Yes. I'm a board member on the National  
24 Institute For Animal Agriculture's Direction Committee,  
25 and that organization is primarily focused on the



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1 maintenance and the sustainability of animal  
2 agriculture throughout the United States and to the  
3 benefit of the producers that are engaged in that  
4 business.

5 MR. BARRIE: I'm sorry to interrupt. It  
6 was the National Institute of Animal Culture?

7 THE WITNESS: Animal Agriculture. Sorry,  
8 Frank.

9 MR. BARRIE: Agriculture.

10 THE WITNESS: Yes, Animal Agriculture.  
11 NIAA.

12 MR. BARRIE: Thank you.

13 THE WITNESS: You bet.

14 Q. (By Ms. Burbach) Can you tell us about the  
15 business -- and I'm going to refer to The Opposer in  
16 this case as IMI for brevity sake. What is the  
17 business of IMI?

18 A. IMI Global is involved in the transparent  
19 and authentic transfer of information from the  
20 production of agriculture and food product to the  
21 consumers that are purchasing that product, which is  
22 no small task but has been the focus of our business  
23 now for 15 years.

24 Q. And can you explain specifically how you do  
25 that?



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1           A.     The end result of our service and our  
2 business is the knowledge that a consumer has by  
3 seeing our services, our marks, in a retail or food  
4 service location that would say, this symbol signifies  
5 the authentic knowledge that this product was produced  
6 per the standards that are being marketed, that the  
7 product is being marketed as such. That is the face  
8 that a consumer, that a customer in the store, an  
9 everyday person, anybody that eats, would see.

10               To achieve that, we have developed a very  
11 highly intensive program of certification and auditing  
12 which requires that we develop a staff of certified  
13 and trained auditors which perform specific auditing  
14 duties while reviewing the information of our  
15 customers, which range from farmers and ranchers,  
16 through feeding, growing operations, on through to  
17 processors and retailers.

18               So all stages of the production process  
19 across commodities, whether it's beef, pork, dairy,  
20 all of those segments of the production chain have to  
21 be certified in order to meet the requirements  
22 necessary to export those products out of the country.

23               So our business is endorsed. We have  
24 oversight through the United States Department of  
25 Agriculture through the agricultural marketing



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1 service, which is an ISO-based program called process  
2 verification within the USDA. This is the standard  
3 and the protocol that was adopted by our foreign  
4 trading partners around the world on the structure by  
5 which we would maintain as an industry and as a  
6 country those traits and those attributes of food  
7 product, namely the traceability and the source  
8 verification, to access those export markets.

9 Q. Okay. You said ISO-based program. What is  
10 that?

11 A. ISO is the International Standards  
12 Organization based in the EU, which is the widely  
13 accepted gold standard for the trade of goods around  
14 the world.

15 Q. Okay.

16 A. And the specific programs that are  
17 addressed by ISO are Guide 65 and the food  
18 traceability standards. I believe it's 22005 is  
19 the --

20 Q. I won't hold you to that.

21 A. Okay.

22 Q. Is there any other business that IMI is  
23 involved with, or does that pretty much cover it?

24 A. That covers it.

25 Q. What's the size of IMI? How many employees



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1 does it have?

2 A. IMI has 18 full-time employees and 20  
3 part-time employees.

4 Q. And does IMI also hire contractors?

5 A. Yes. The part-time employees are what we  
6 call independent contractors.

7 Q. And what kind of responsibilities do those  
8 contractors have?

9 A. Those independent contractors are our  
10 auditors, a portion of our auditors, and they are  
11 geographically distributed across the country to  
12 enable them to efficiently address the needs of food  
13 producers in their areas.

14 Q. So explain how an auditor would perform its  
15 services to make sure that the production, you know,  
16 basically complies with appropriate regulations.

17 A. Well, all of our programs are QMS, quality  
18 management systems, so as opposed to -- well, the  
19 quality control that we offer is through document  
20 review, standardized processes and procedures, a  
21 quality manual. Each one of our customers, each one  
22 of our producers, engages in the development of a  
23 program on their operation.

24 Each one of our auditors is trained to go  
25 through and review the documents that those producers



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1 use to manage their business and to verify that the  
2 claims that they're making about the product are  
3 legitimate, truthful and accurate.

4 Q. So do auditors go on site, then --

5 A. Yes.

6 Q. -- to perform those services?

7 A. Correct.

8 Q. Is IMI affiliated with any other companies?

9 A. In what way?

10 Q. I mean, like, are there any other sister  
11 companies or subsidiaries or parent companies?

12 A. No.

13 Q. And I think you testified to this, but you  
14 started the company, didn't you?

15 A. Yes.

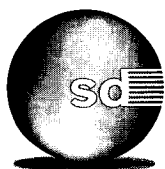
16 I want to back up.

17 Q. Sure.

18 A. We do perform some audits off site. So not  
19 100 percent of our auditors are performing those  
20 audits on site. Sometimes they perform desk audit  
21 reviews. So it's -- there's a combination. I just  
22 wanted to clarify that.

23 Q. I appreciate that. And, actually, that  
24 triggered another question for me.

25 Are your auditors able to provide those



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1 services throughout the United States?

2 A. Yes.

3 Q. Does your company offer services outside  
4 the United States?

5 A. Not in a significant way. We have worked  
6 on that in the past, we have full intention of doing  
7 that in the future, but not to a significant degree.

8 Q. Okay. I want to change our -- narrow our  
9 focus a little bit to the trademark at issue in this  
10 proceeding.

11 Do you understand that the trademark in  
12 dispute is the application -- contained in the  
13 application filed by Mr. Barrie for  
14 Knowwhereyourfoodcomesfrom.com and design?

15 A. Yes.

16 Q. And you understand that the objection that  
17 you've lodged is that it conflicts with your trademark  
18 Where Food Comes From?

19 A. Yes.

20 Q. And I want to spend some time talking about  
21 that trademark. Is there anyone else at IMI that  
22 would be more knowledgeable than you about the Where  
23 Food Comes From trademark?

24 A. No, but I do work with my wife who is the  
25 President of the company, Leann Saunders, and we are



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1 truly partners in the business and truly partners in  
2 the development of Where Food Comes From and that mark  
3 itself.

4 Q. Okay. Let's start by looking at some  
5 exhibits, and then I'll have you speak a little bit  
6 more about them.

7 A. Okay.

8 (Whereupon, Deposition Exhibit No. 2, Where  
9 Food Comes From Trademark Application, was marked for  
10 identification.)

11 Q. (By Ms. Burbach) I'm going to hand you  
12 what's been marked as Exhibit Number 2, and if you  
13 would take a moment to look at that, and when you're  
14 finished, if you would let me know.

15 A. Yes.

16 Q. Can you identify what's contained in  
17 Exhibit 2?

18 A. This is the -- our Where Food Comes From  
19 registration document, service mark.

20 MR. BARRIE: Cheryl, do you have a page  
21 number on that? Sorry to interrupt.

22 MS. BURBACH: Sure. No problem. I'll try  
23 to do that going forward. It's IMI 22.

24 MR. BARRIE: 22, okay.

25 MS. BURBACH: On the bottom right-hand

1 corner, there should be an exhibit label that says  
2 "Exhibit 2."

3 MR. BARRIE: I have it. Thank you.

4 MS. BURBACH: Sure.

5 Q. (By Ms. Burbach) And the documents behind  
6 it, does that appear to be the file history of that  
7 trademark application?

8 A. Yes, it does.

9 Q. Do you recall how you came to select the  
10 trademark Where Food Comes From?

11 A. Yes, very specifically. As I mentioned, my  
12 wife, Leann Saunders, and I are partners, and we spend  
13 a significant amount of time, as I'm sure you can  
14 imagine, discussing these issues, and probably more  
15 than we should. But we had been working in the  
16 business together for, again, about ten years, 11  
17 years, and in 2007 we had really focused a lot on our  
18 understanding what our business is but the gap in what  
19 we were able to communicate with the lay consumer and  
20 how they were able to understand the intricacies of  
21 food production, how food was produced and, more  
22 importantly, how food was distributed.

23 And in looking at our business and looking  
24 at how we felt it was important to communicate that to  
25 consumers and probably most specifically my father



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1 who, after graduating from an Ivy League school and 12  
2 years into a start-up business that was appearing to  
3 be irrelevant, it was very difficult for me to  
4 describe exactly how we were able to engage in our  
5 business. And when we looked at each other and talked  
6 about where we were going and what we wanted to do,  
7 Leann mentioned the phrase "Where Food Comes From" and  
8 being able to suggest to consumers that that was a way  
9 to communicate simply what it was that we did.

10 And from that point forward in that meeting  
11 when we were sitting visiting, that became our mantra  
12 and our banner of what we thought was important to  
13 communicate to consumers. And as soon as my father  
14 heard that phrase and our new brand, it became very  
15 clear to him what we were doing.

16 Q. Great. So when you came up -- you and  
17 Leann came up with this trademark --

18 A. Which is a point of contention to this day.

19 Q. Maybe we should depose Leann, too.

20 A. She probably should be, too, although we  
21 would be arguing about it, I'm sure.

22 Q. So when that mark was selected -- we'll be  
23 objective about it -- did you engage in any due  
24 diligence, searches or investigations, to determine  
25 whether the mark was available for use?



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1 A. Yes, significant.

2 We -- Hovey Williams, your employer, has  
3 been a long-term affiliate of IMI Global, and based on  
4 several patent applications that we've submitted and  
5 all of our intellectual property, we engaged Hovey  
6 Williams to do a very extensive search to see if there  
7 was any existing marks or phrases out there that would  
8 potentially conflict with that.

9 Q. Okay. And I'm not asking you to disclose  
10 the opinion of the attorney to you, but based upon  
11 what you learned from those search results, did you  
12 then adopt the Where Food Comes From trademark?

13 A. Yes, immediately.

14 Q. Okay. Did you seek the services of anybody  
15 else to help you develop the trademark?

16 A. The phrase was relatively simple, so with  
17 the intellectual property search, we felt comfortable  
18 that we had a good opportunity to secure registration  
19 on the mark.

20 The logo with the tree and the circle  
21 design, we engaged a marketing firm out of Amarillo  
22 which we had worked with for a number of years. They  
23 conducted three different market surveys in Kansas  
24 City, Denver and Dallas with a cross section of  
25 consumers, and we had three different logo designs



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1 that they had worked up that they had developed for us  
2 to get that feedback. And over the course of those  
3 three meetings with the consumers, we settled in on  
4 the color, we settled in on the tree and we also  
5 settled in on the placement of the words "Where Food  
6 Comes From" at the top and then the "Verified" at the  
7 bottom, which would give us the opportunity to say  
8 that it was not only a Where Food Comes From product  
9 but that it was a source verified product.

10 Q. Okay. Do you recall why you chose that  
11 particular design for your trademark?

12 A. We chose that design because the consumer  
13 focus groups looked at it and thought that it conveyed  
14 a sense of natural, green, sustainable. So it was a  
15 very eye-catching, friendly message to consumers that  
16 they really migrated towards as they saw it.

17 Q. So you, in developing this brand and  
18 trademark, also used focus groups through this  
19 advertising agency?

20 A. Yes. Yep.

21 (Whereupon, Deposition Exhibit No. 3, Where  
22 Food Comes From Certificate of Registration, was  
23 marked for identification.)

24 Q. (By Ms. Burbach) Okay. I'm going to hand  
25 you now what is marked as Exhibit 3, and it begins



1 with IMI 55. And if you could identify what's  
2 contained in Exhibit 3.

3 A. This is the trademark office approval of  
4 our service mark with the black and white color of our  
5 logo -- picture of our logo.

6 Q. Is that a copy of the certificate of  
7 registration for the logo?

8 A. Yes.

9 Q. And the documents behind it, are those the  
10 file history documents?

11 A. Yes.

12 Q. Could you read the description of services  
13 that you registered the mark for there. It's on the  
14 first page. It should tell you what the services are.

15 A. Right here?

16 Q. Yep.

17 A. Okay. "For food quality verification  
18 services, namely verifying the origin and handling  
19 practices of food production."

20 Q. And is that an accurate description of what  
21 you were doing when that registration was issued?

22 A. Yes.

23 Q. Do you recall when you selected the Where  
24 Food Comes From trademark, when you thought of using  
25 that mark, you or Leann?



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1           A.    I cannot remember a specific date, but it  
2   was late, mid 2007.

3           Q.    Okay. After you chose that mark, did you  
4   then have someone on your behalf file the trademark  
5   applications for you?

6           A.    Yes.

7           Q.    And did you pay to have those registered?

8           A.    Yes.

9           Q.    Okay.

10          A.    A lot.

11          Q.    Not that much. That's a joke. I shouldn't  
12   be sarcastic on the record.

13                   (Whereupon, Deposition Exhibit No. 27,  
14   Where Food Comes From Modified Trademark Application,  
15   was marked for identification.)

16          Q.    (By Ms. Burbach) I am now going to hand  
17   you what's been marked as Exhibit 27. It begins with  
18   IMI Page 178. And I would ask you to identify that.

19          A.    This is a modified new application which  
20   includes not only the phrase "Where Food Comes From,"  
21   but we've added two additional words, "Source  
22   Verified."

23          Q.    And is that for the logo?

24          A.    Yes.

25          Q.    And if you look at the description of



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1 services, I believe they start on the second page  
2 there. Can you explain why those services are  
3 different than what was in your prior registrations?

4 A. They are different as we've developed Where  
5 Food Comes From to understand the technology that  
6 could be utilized and that we would utilize to better  
7 convey our message and our story to consumers, both --  
8 both consumers that were able to purchase those  
9 products, but also the promotion of those products on  
10 behalf of the producers and the people that were  
11 producing.

12 Q. Is that a more comprehensive listing of the  
13 goods and services being offered by your company?

14 A. Yes.

15 Q. Are you currently offering those goods and  
16 services in connection with the Where Food Comes From  
17 logo trademark?

18 A. Yes.

19 Q. Do you recall whether, prior to your  
20 adoption and use of the trademark, whether you  
21 discovered anyone else was using a similar mark for  
22 similar or related services?

23 A. No. Although there are others with  
24 standards, no, nobody had focused exclusively on the  
25 source verification of the product and the



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1 authenticity provided through third-party verification  
2 of that.

3 Q. Let me ask it a little differently.

4 Do you recall if anyone was using a similar  
5 trademark for similar or even related services, even  
6 if they weren't offering --

7 A. No, nobody was.

8 (Whereupon, Deposition Exhibit No. 28,  
9 Where Food Comes From Application to Update Word Mark,  
10 was marked for identification.)

11 Q. (By Ms. Burbach) Let me go ahead and  
12 identify Exhibit 28, which begins IMI 203. And I'd  
13 ask you to identify that.

14 A. This is the application for the -- for  
15 updating the Where Food Comes From word mark.

16 Q. And are your services and goods on there  
17 identical to the ones in the previous application we  
18 just looked at in Exhibit 27?

19 A. Yes.

20 Q. Has the trademark been successful so far in  
21 distinguishing your services from the services of  
22 others?

23 A. Very.

24 Q. Can you elaborate on that?

25 A. Yes. We've -- because of our focus on



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1 maintaining the oversight through an ISO USDA program,  
2 we've been able to really differentiate ourselves and  
3 differentiate those brands and those products that are  
4 being marketed without the same level of verification  
5 and third-party authentication of what's occurring.

6 So most recently we've been -- a retailer  
7 in Ohio has selected our verification and is using our  
8 certification mark purely because they believe it  
9 conveys a level of integrity that they believe their  
10 consumers are interested in and will pay for.

11 Q. And how has your Where Food Comes From  
12 trademark helped you with that particular part of the  
13 business?

14 A. Significantly. It's -- it truly is the  
15 critical component of our whole business.

16 As food is produced around the world as a  
17 pull industry, meaning that consumers request certain  
18 attributes, certain products, and as that evolution  
19 occurs with consumers to request and to -- or demand  
20 that their product is verified and certified in a  
21 certain way, it's created a great opportunity for  
22 producers to fill that need and to meet that  
23 opportunity.

24 Q. So how is your trademark used to do that?  
25 I mean, in this case how do you use your trademark so



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1 that consumers can track it and trace it and how  
2 producers feel like there's a level of integrity, I  
3 think is the word you used, with their product?

4 A. Correct. Consumers use our trademark and  
5 our logo -- if they see our mark on a product in a  
6 grocery store or in a restaurant, they're able to  
7 immediately utilize either the URL to identify the  
8 source of origin on that product or utilize a QR code,  
9 a quick response code, which is immediately  
10 recognizable by all -- most SmartPhones in the market  
11 today, and consumers are able to scan that code using  
12 their phone and then learn more about the source of  
13 origin on the food that they are purchasing.

14 Q. And I think you've kind of alluded to this,  
15 but does your trademark appear on the products or in  
16 connection with the services of others, like producers  
17 or retailers?

18 A. Always. In fact, we are not a brand in and  
19 of itself, meaning we do not produce any food. We are  
20 purely a third-party verification of others' brands  
21 and others' food that they are producing.

22 Q. Okay. I think you've talked about what  
23 services you offer in connection with the Where Food  
24 Comes From mark. I kind of want to break them down  
25 and go through them a little bit.



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1 A. Okay.

2 Q. And if you need to look at these exhibits  
3 we've looked at to refresh your recollection, feel  
4 free to do so, but do you recall when you began first  
5 using or at least as early as you can think of when  
6 you began using the Where Food Comes From trademark in  
7 connection with your verification services?

8 A. It was very shortly after -- we'd already  
9 been engaged in the verification, so to sum it up, our  
10 product was already verified to meet the Where Food  
11 Comes From standards for how food was being marketed,  
12 but the critical aspect was how we were able to  
13 communicate that message in a value-based system to  
14 retailers and people that were selling the food to  
15 their customers.

16 So what it was really -- what it really  
17 helped us to do was to move to the final portion of  
18 the food industry, and that is to the consumers and  
19 the people that are purchasing and eating the food  
20 every day. So it was extremely critical and it  
21 continues to be extremely critical to our business,  
22 because if we don't have consumers that are requesting  
23 the verification and willing to pay for that  
24 verification, then there's really no need or no real  
25 drive for producers to do that.



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1                   So it's a very symbiotic relationship  
2     between the people that are consuming the food, the  
3     decisions that they make about the way that they  
4     purchase their food, and the people that are producing  
5     that food.

6                   Q.     And do you recall when you first started  
7     using the Where Food Comes From trademark in  
8     connection -- like, publicly with those services?

9                   A.     Yes. We worked specifically with Sysco  
10    Corporation. They were wanting to promote a local  
11    beef program in New Mexico and Texas which would  
12    highlight producers in New Mexico and their production  
13    method within the state to high-end consumers in the  
14    Albuquerque area. So it was casinos, high-end  
15    restaurants that were interested in purchasing product  
16    that would be raised in New Mexico.

17                  Q.     And do you recall the month and year you  
18    did that?

19                  A.     That was late in 2008, so October when we  
20    first started to work with them, and then it was early  
21    in 2009, so...

22                  Q.     Okay.

23                  A.     Sometime thereafter.

24                  Q.     Do you recall when you first began using  
25    your website that contained or displayed the Where



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1 Food Comes From trademark?

2 A. Yes. It was very shortly thereafter. It  
3 was early in 2008, so very -- not very long after we  
4 had originally done our work on determining whether  
5 there was any conflicts or any potential conflicts.  
6 And then we had a couple of derivations of the logo  
7 that we worked through at the very early stages, and  
8 that was early in 2008.

9 Q. Okay. And can you explain what kind of  
10 information is provided on your website displaying the  
11 Where Food Comes From trademark?

12 A. What's displayed on Where Food Comes From  
13 are the producers and retailers which have been  
14 verified through our system. So we've got an  
15 extensive list of beef and pork producers -- beef and  
16 pork is our focus -- that have already been certified.  
17 So a consumer can search through our database of  
18 producers that have been verified and learn more about  
19 their operations.

20 And each one of our producers provides a  
21 picture that they feel would communicate effectively  
22 to consumers, either of their family or of their ranch  
23 or of their farm, and then a brief description of  
24 their operation and the things that are important to  
25 them about the way that they produce the food that



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1 people are going to eat.

2 Q. Do any of those producers that you referred  
3 to practice sustainable agriculture methods?

4 A. Yes.

5 Q. And do you promote that on your website?

6 A. Yes, if they're verified.

7 Q. Right.

8 A. If their claims of sustainability can be  
9 verified and audited and documented.

10 Q. Okay. What other kinds of information do  
11 you provide on your Where Food Comes From website?

12 A. We have news and information. We have  
13 current topics related to food production. We also  
14 list those retailers and those food service  
15 establishments, restaurants, that are engaged in  
16 retailing the products that have been verified as  
17 Where Food Comes From approved.

18 Q. Okay. Does your website also include  
19 recipes?

20 A. Yes. Yep. We have unique recipes. We  
21 have fun facts about food and food production.

22 We really try to provide consumers a  
23 platform to understand more about the realities of  
24 food production and that three out of every four pears  
25 that are eaten today in the U.S. came from China. So



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1 providing that information to consumers in a  
2 non-coerced way, that it's authentic and it's  
3 truthful, is a big part of the site, which has now  
4 expanded into a Facebook page for Where Food Comes  
5 From and a Twitter account as well.

6 Q. You're kind of alluding to it now, but can  
7 you speak a little bit about, you know, why it's  
8 important for consumers to have that information, like  
9 what you see is your company's goal in providing  
10 consumers that information, why it's important they  
11 can track or trace food?

12 A. Well, it's critically important for anybody  
13 that eats, and that is really the truthful side of  
14 food production in the United States is critical.

15 And it's probably important for me to make  
16 a distinction today that we work with a significant  
17 number of producers across the United States. We work  
18 with over 6,000 farms and ranches today. Some of them  
19 are very, very big and some of them are very, very  
20 small, and it is not a truth that big means bad and  
21 small means good. It's the production, the  
22 accountability and the passion that goes into  
23 producing food across this country and across  
24 different commodities is not a question of large or  
25 small or close or far; it's a question of the



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1 integrity that goes into the food that's produced and  
2 a producer being willing to identify and to put their  
3 name and reputation on the line with the products that  
4 they're producing.

5 So at its core is the source verification.  
6 Before you can determine whether a product is natural  
7 or obtainable or humanely handled, the first  
8 requirement is that you have to know the source of  
9 origin. You have to know who it was that produced it  
10 and what they did to give that consumer the confidence  
11 that what they're saying about that product is true  
12 and accurate.

13 Q. Can consumers use your services in  
14 connection with the Where Food Comes From trademark to  
15 determine sustainable producers and producers that do  
16 engage in humane animal practices and that kind of  
17 thing?

18 A. Yes, most definitely.

19 Q. You spoke about one way earlier for them to  
20 do that is to use their SmartPhone with a QR code, I  
21 believe? Can you explain what a QR code is?

22 A. A QR code is a quick response code.  
23 It's -- I'm not a technical expert on it.

24 Q. That's all right.

25 A. But it is an open source technology that



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1 has a three-dimensional -- a two-dimensional --  
2 sorry -- code that is recognized -- there's an  
3 international standard which all SmartPhone providers  
4 have adhered to, and it's -- it's an open code, so  
5 there's no cost to develop these codes internally and  
6 to utilize them for whatever purposes you may see fit.

7 Q. And you spoke a little bit about this, but  
8 I want you to explain a little bit more, how does IMI  
9 use the Where Food Comes From QR code in promoting its  
10 services?

11 A. In the case of Heinen's, a retailer, each  
12 package of beef and pork that is sold at that store  
13 has the logo and the QR code embedded into its price  
14 and weight label, which requires a significant amount  
15 of integration and work with FSIS, the Food Safety  
16 Inspection Service of the United States, Department of  
17 Agriculture, which controls all labeling, so all of  
18 the product and all of the information tied to it is  
19 on each package of beef, pork and poultry that's being  
20 sold in Heinen's.

21 On the food service side, in restaurants,  
22 the typical method of how a consumer would see that is  
23 the QR code and the label are integrated into the  
24 existing menu or point of purchase material. So if  
25 there's a table tent on the table that you're eating



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1 at, then the label and the code would be right there.

2 The other alternative is to have, when you  
3 walk into a potential food service market or store, to  
4 have on the board a larger copy of the QR code and the  
5 logo, which would give the consumer the ability to do  
6 the same thing.

7 Q. Okay. So I as a consumer have my  
8 SmartPhone, and I go up and I snap the image of the QR  
9 code. What happens?

10 A. Your mobile application appears and it  
11 talks about that restaurant, that vendor, and about  
12 the steps that they've taken to verify that the food  
13 that you're eating has actually been -- has actually  
14 been verified and certified through this process.

15 Then you're able to drill down, if you  
16 will, further into the producers and to see pictures,  
17 the brief description that I mentioned earlier about  
18 how that producer raises their food, what they are  
19 doing on their own operation, and then in certain  
20 circumstances we can also provide videos of how that  
21 producer operates.

22 Q. Okay. Does your website -- I think you've  
23 kind of alluded to this, too, but specifically does  
24 your website link to producers online?

25 A. Yes.



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1 Q. And are some of those producers what we  
2 would call, like, local farms that provide local food  
3 supply?

4 A. Local to where they are. They're  
5 distributed across the country, so we have producers  
6 from Washington to Florida, and in their local  
7 markets, in their regional markets, sure, they're  
8 local.

9 Q. And are you able to provide links to  
10 farmers markets or agricultural co-ops if you wanted  
11 to?

12 A. Yes, we are. The largest problem that we  
13 find in farmers markets and local co-ops is their  
14 processes aren't verified and they don't have the same  
15 level of authentication in the source of origin on the  
16 food that's being sold through their establishment.  
17 So the real problem with farmers markets is that  
18 there's really no way to know or to verify that that  
19 product actually is coming from the place where the  
20 people that are selling it say it comes from.

21 Q. So have you currently been able to partner  
22 with any farmers markets to engage in your  
23 verification program with Where Food Comes From?

24 A. We've worked with our local farmers markets  
25 in Colorado. And as I just alluded to, the biggest



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1 problem is that they -- when we talk about the  
2 requirements of the program and having to have a third  
3 party verify that it is an organic product or it's a  
4 natural product, that they immediately realize that  
5 that's -- that's a difficult task and they can't do  
6 it.

7 Q. Why is that?

8 A. Because the quality control of farmers  
9 markets and establishments less than 250,000 pounds a  
10 year -- I think that's the threshold, that anybody  
11 that sells less than that does not have to go through  
12 the same steps to verify products that they're selling  
13 as a large retailer would or a large restaurant chain.

14 Q. Okay. Are there any other services we  
15 haven't talked about that you can think of that you  
16 use in connection with the Where Food Comes From  
17 trademark?

18 A. I don't -- I don't, but there are a couple  
19 of components of it that are very critical to us  
20 moving forward that -- one is that we intend to  
21 utilize Where Food Comes From as a mechanism to  
22 directly compensate producers for the sale of their  
23 product at retail.

24 So one of the -- one of the things that's  
25 very difficult to accomplish, and source verification



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1 is a requirement of it, is the ability to take the  
2 actual purchase price of a product in a retail  
3 establishment and to give a portion of those proceeds  
4 back to producers.

5 We've also felt it very important to  
6 provide a mechanism to get involved in philanthropy  
7 around the areas where food is produced. So one of  
8 the objectives that Leann and I have had long-term is  
9 to take a portion of the licensing fees from the sale  
10 of those products and directly contribute them back to  
11 the non-profit, helping with hunger, helping with  
12 food, in the area where the food was produced.

13 Q. And while we're on this topic, are there  
14 any other areas in which you see your business  
15 expanding, which would be a logical extension of what  
16 you're already doing in connection with Where Food  
17 Comes From?

18 A. Yes. The first expansion is to the  
19 international sale of U.S. foods that are going  
20 overseas. So we sell a significant amount of meat,  
21 dairy, vegetables, row crops to other countries around  
22 the world, and the verification of those products  
23 going around the world is something that we really see  
24 as a huge -- a big opportunity for the company.

25 And then the ability to verify other



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1 products, food coming from Central and South America,  
2 obviously food coming from the Pacific Rim in China,  
3 to verify those products coming into the United States  
4 and in domestic areas around the country, too.

5 Q. Anything else?

6 A. No.

7 Q. Can you explain the types of businesses or  
8 consumers you would target or do business with? You  
9 probably have to break it out a little bit, but...

10 A. Yeah. Well, as I mentioned, our largest  
11 customer base are farmers and ranchers, so either  
12 people that raise or grow their food are our largest  
13 customer base.

14 We work with, as I mentioned, growers,  
15 people that somehow consolidate either multiple  
16 products or specific products, and then the  
17 processors, the companies which on a large or small  
18 scale are making those products into foods that can be  
19 eaten by consumers on a large or on a small scale.  
20 It's very -- the traceability is a critical component  
21 of that.

22 And then finally and most importantly, the  
23 retailers and the restaurants that would be selling  
24 those products.

25 Q. What about individual consumers? Are you



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1 targeting them?

2 A. Yes, as much as we can afford. We target  
3 them, again, through primarily the Internet, but we  
4 also are engaged in television advertising in specific  
5 areas.

6 In the case of the Heinen's grocery store,  
7 we're working very hard in the Cleveland metropolitan  
8 area. We're doing local interviews with local  
9 television stations, local papers, specific reporters  
10 in those areas. So, yes, we're doing our best to try  
11 to communicate with consumers in those areas where,  
12 again, we can afford it.

13 Q. Sure. How important is it to you that the  
14 Where Food Comes From trademark is associated with a  
15 high quality of service?

16 A. I believe it's critical because really all  
17 that this business that we are engaged in is truly  
18 based on trust, trust that the consumer has in the  
19 mark, in the symbol that they see, and trust that  
20 what's being marketed to them about the food that  
21 they're about to purchase and eat is truthful and  
22 accurate.

23 So the biggest potential problem that we  
24 have, I believe, as a company and as a service Where  
25 Food Comes From is if for whatever reason we lose that



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1 trust with consumers and they have a non-authentic  
2 experience where they purchase a product that they  
3 think is one thing and it turns out to be another.  
4 That is a death blow to our company, because if  
5 consumers can't trust what's being put on the package,  
6 then -- or what's being verified through the  
7 communication, then there's really no value at all.

8 And I think correspondingly, on the  
9 producers' side, they have a significant problem --  
10 food producers not only in the United States but  
11 around the world have a very difficult time in  
12 communicating the message of what they're doing to  
13 consumers, and that gap is very, very difficult for  
14 both parties to bridge, and our ability to do that in  
15 a truthful and authentic way is critical.

16 And on a consumer with a bad experience, a  
17 producer that somehow is non-vetted or gets through  
18 the system and produces a product that does not have  
19 the quality, does not have the authenticity, is just  
20 as dangerous to every other producer that is doing  
21 exactly what they say they're doing. So it's -- the  
22 overwhelming priority of Where Food Comes From is to  
23 be truthful and not to -- not to say that this  
24 agriculture is better than this agriculture or to say  
25 that this product is better than another product.



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1           It's that if a producer is willing to put  
2           their name, their reputation, on a product and to  
3           trace that product through the entire process, that is  
4           the first mark of quality, because irregardless of  
5           whatever else you want to purchase as a consumer, you  
6           have to know who did it and where they did it before  
7           you can talk about anything else.

8           Q.    Okay.

9           MS. BURBACH: I think now would be a really  
10          good time for a break. Can we take, like, a  
11          five-minute break, Frank?

12          MR. BARRIE: Okay, Cheryl, that's fine.

13          (Brief recess.)

14          MS. BURBACH: Back on the record.

15          (Whereupon, Deposition Exhibit No. 4, Logo  
16          Usage Guide, was marked for identification.)

17          Q.    (By Ms. Burbach) I'm handing you what's  
18          been marked as Exhibit 4, and it's Bates numbered IMI  
19          15. And, Mr. Saunders, if you could identify this  
20          document.

21          A.    This is our Logo Usage Guide.

22          Q.    And how is a Logo Usage Guide used?

23          A.    The Logo Usage Guide is for all of our  
24          licensees on the color scheme, size, the correct way  
25          to utilize the logo and incorrect way to utilize the



1 logo.

2 Q. So how is this -- who receives this  
3 document?

4 A. All of the licensees. So the food,  
5 retailers and the distributors. Anybody that's  
6 putting this mark on a package or a point of purchase  
7 material.

8 Q. So does anybody who's licensed to use the  
9 mark have to comply with these guidelines?

10 A. Yes.

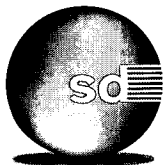
11 Q. And who created the guidelines?

12 A. Our -- we did, our ad firm.

13 Q. Let's talk about your advertising. How  
14 would consumers or your potential customers learn  
15 about your company and the Where Food Comes From  
16 business?

17 A. A number of traditional marketing vehicles.  
18 We've -- as I mentioned previously, we've spent a  
19 significant amount of time using the Internet, using  
20 our website and using social media tools to provide  
21 that.

22 We've engaged in a couple -- two  
23 specifically different television shows that were  
24 focused on Where Food Comes From. One is a show  
25 called The Balancing Act on Lifetime Television, and



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1 then we advertise on a television program on rural  
2 television, RFDTV, called Cattlemen to Cattlemen every  
3 week.

4 In specific regions we've focused on radio  
5 advertising. We have a contractual relationship with  
6 an individual named Baxter Black who is a cowboy poet,  
7 and he's a spokesman for Where Food Comes From and IMI  
8 Global, and every media event that he's engaged in  
9 where he's doing a book signing or --

10 Q. Isn't he, like, an author and a poet or  
11 something?

12 A. Yeah. He calls himself a cowboy poet.

13 Q. That's right.

14 A. Used to be on PRN all the time.

15 And, again, in specific areas we will  
16 engage in print advertising. A big focus of our  
17 marketing advertising budget has been public relations  
18 focused, so business trade magazines, Supermarket  
19 News, Restaurant News, Meat and Processing, Dairy  
20 Today, a number of different periodicals that we  
21 advertise in.

22 Q. I want to flesh out a few of these. You  
23 said "website." Where is your website located?  
24 What's the domain that you --

25 A. [Www.wherefoodcomesfrom.com](http://www.wherefoodcomesfrom.com).



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1 Q. And when you mentioned social media, what  
2 types of social media sites do you use to promote the  
3 Where Food Comes From services?

4 A. Facebook and Twitter.

5 Q. So you have a Facebook page?

6 A. Yes, and a Twitter page.

7 Q. And can people follow you on Facebook and  
8 Twitter?

9 A. Yes.

10 Q. Can people post on your wall on Facebook?

11 A. Yes.

12 Q. How important is Facebook to your business?

13 A. Much more important than I would like to  
14 admit. It's the true third-party verification of  
15 anything that could potentially be sold, bought,  
16 produced, marketed. And our customers are discerning  
17 young individuals, and by a long majority they are  
18 Facebook users.

19 And Twitter has become the immediate source  
20 of news. It is the place where news breaks typically  
21 anymore, which is a very, very difficult thing for me  
22 to comprehend, but Twitter is the -- any news that's  
23 immediately out, Twitter is the place where it is.

24 So in our opinion, based on what we were  
25 wanting to do with Where Food Comes From and to tell



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1 the true story of how food is produced, good and bad,  
2 Facebook and Twitter were critical components of that.

3 Q. How does IMI use Facebook and Twitter to  
4 convey those messages?

5 A. We highlight our producers that are engaged  
6 in our program. We also provide information. For  
7 example, yesterday our focus on Facebook was about  
8 sugar. So we talk about the history of sugar. We  
9 talk about where sugar is primarily produced. Brazil  
10 produces 24 percent of the world's sugar. We talk  
11 about the history of sugar.

12 So all food groups, all food products that  
13 are there, anything that would potentially be of  
14 interest to consumers to know more about food and how  
15 the food that they're eating is produced.

16 Q. As far as your Internet advertising, does  
17 IMI use search engine optimization techniques to draw  
18 online users to the Where Food Comes From website or  
19 social media sites?

20 A. Yes. We've spent a lot of time working to  
21 become selected as a news source by Google and Yahoo.  
22 We use Google ads. We -- everything that we do is  
23 focused on how we communicate better with Google,  
24 Yahoo and the other search engines.

25 Q. Okay. How about sponsored advertising with



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1 Google? Does IMI use sponsored advertising to promote  
2 its Where Food Comes From services?

3 A. Yes.

4 Q. And which search engines does it do that  
5 with?

6 A. We use Google.

7 Q. Does IMI -- I think you alluded to this  
8 earlier, but does IMI engage in in-person type  
9 solicitations to promote its Where Food Comes From  
10 services?

11 A. Yes. Yes.

12 Q. Can you give me an example of that?

13 A. Yeah. Case in point, the reason I was  
14 unable to attend the deposition last week was because  
15 I was at a meeting in New York City with a large food  
16 service distributor called Chef's Warehouse in the  
17 Bronx and, through that relationship, was also  
18 involved in promoting the Where Food Comes From brand  
19 to Delmonico's the restaurant, and other restaurants  
20 in the area as well.

21 Q. Okay. How about trade shows? Does IMI use  
22 trade shows as a means of promoting its Where Food  
23 Comes From program?

24 A. You know, we do trade shows significantly.  
25 We do mostly producer trade shows across the country.



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1 So to be very honest, no, we haven't focused on a lot  
2 of trade shows to promote Where Food Comes From  
3 specifically, although we have promoted our  
4 verification services to trade organizations and trade  
5 shows.

6 Q. Okay. You talked about printed promotional  
7 materials. Can you give me -- well, we're actually  
8 probably going to go through some of those. How are  
9 your printed promotional materials distributed?

10 A. We distribute those materials first and  
11 foremost to people that request them. So if you go on  
12 the website or you go to somehow contact us, then if  
13 you are requesting that information, we'll directly  
14 distribute it to you.

15 We directly distribute all of our consumer  
16 information to each one of our producers. In fact,  
17 they are very engaged in the process, as they are  
18 consumers themselves. And then we obtain certain  
19 lists and certain places that we're able to distribute  
20 our information as much as we can do it on a  
21 cost-effective basis.

22 Q. So do you send, like, mass mailings out to  
23 promote the services?

24 A. Yeah. We're engaged in constant contact as  
25 an e-mail service which performs that online.



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1 Q. How about in -- have you done any  
2 advertising in, like, the Yellow Pages under the Where  
3 Food Comes From trademark?

4 A. No.

5 Q. How about your labeling program? Is that a  
6 marketing channel for you?

7 A. I'm not sure I understand what -- the  
8 question.

9 Q. When your mark appears on food products,  
10 does that market or promote your services --

11 A. Oh. Yes.

12 Q. -- Where Food Comes From?

13 A. More than anything.

14 Q. More than anything?

15 A. Yeah. That conduit to the consumer -- and  
16 here's the example: When a consumer scans that QR  
17 code to learn more about the source of origin on their  
18 food, they also have an opportunity to download  
19 recipes. They can look at videos of how to prepare  
20 certain foods. Heinen's fine foods has a chef that  
21 they utilize that will give cooking demonstrations.  
22 And then we're also in the early stages of potentially  
23 providing coupons or surveys or different information  
24 that consumers can use via their SmartPhone.

25 Q. Does the Where Food Comes From trademark

1 appear on any point of purchase displays yet?

2 A. Yeah, the ones that I mentioned in the  
3 casinos and in Albuquerque and then different  
4 restaurants and -- yeah. There's a pretty significant  
5 amount, actually.

6 Q. Does IMI use e-mail as a method of  
7 promoting its Where Food Comes From program?

8 A. Yes.

9 Q. So does that do that through mass e-mail  
10 distribution or --

11 A. Yeah.

12 Q. How does that happen?

13 A. We have a newsletter that we distribute to  
14 e-mails that have solicited us and that have asked to  
15 be on those lists, and we send out, I believe it's  
16 monthly newsletters now.

17 Q. Are your services associated with the Where  
18 Food Comes From program also marketed through your  
19 partnerships with, like, companies like Heinen's or  
20 Sysco?

21 A. Yes.

22 Q. When you send them consumer printed  
23 promotional materials, do they distribute those?

24 A. Yes.

25 Q. To consumers?



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1 A. Yes.

2 Q. Let's go through some of the examples.  
3 We've been talking about them, but it would probably  
4 be helpful to actually hand them to you.

5 (Whereupon, Deposition Exhibit No. 5, Where  
6 Food Comes From Homepage, was marked for  
7 identification.)

8 Q. (By Ms. Burbach) I'm going to hand you  
9 what's been marked as Exhibit 5. It is IMI 93. And  
10 if you could tell me what this document is.

11 A. This is the most previous -- right word --  
12 the last homepage --

13 Q. Version?

14 A. Yes, the last version of our homepage on  
15 the website for Where Food Comes From.

16 Q. Then on the bottom do you see the date this  
17 was printed?

18 A. 6/20/2011.

19 Q. So is that how it basically appeared on  
20 June 20th, 2011?

21 A. Yes.

22 Q. Okay. And what does it mean when you say,  
23 "Consumers come first in our book"?

24 A. That, again, back to the consumers and  
25 people that eat food are the ones that dictate the way



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1 food is produced in this country. And our motto for  
2 consumers coming first is that that's our -- our job  
3 is to tell them the truth of how their food was  
4 produced.

5 Q. And I can see here there's a link to click  
6 to sign up for the newsletter?

7 A. Yeah. Yep. And Facebook.

8 (Whereupon, Deposition Exhibit No. 6,  
9 Heinen's Meat Case Cling, was marked for  
10 identification.)

11 Q. (By Mr. Barrie) Okay. Moving on to  
12 Exhibit 6, now, Exhibit 6 is IMI 16. Could you please  
13 identify this document.

14 A. This is a case cling used by Heinen's in  
15 their retail stores. So this goes directly above the  
16 meat case in all Heinen's stores.

17 Q. And does this have a QR code on it?

18 A. Yeah. The QR code is the checkerboard  
19 thing down in the right.

20 Q. Okay. And so this one is specifically used  
21 with Heinen's, right?

22 A. Yes.

23 Q. Can you tell me a little bit about  
24 Heinen's?

25 A. Heinen's is a high-end retailer, regional



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1 retailer, based in Cleveland. It was founded by Joe  
2 Heinen in 1929, who is the grandfather of the two  
3 executives today, Tom and Jeff Heinen. They are --  
4 there's 18 stores, I believe, in the Cleveland area.  
5 They're in the process of expanding to Chicago as  
6 well. But they are very focused on high-quality  
7 products and have a very discerning customer base.

8 Q. Okay. And how long have you been in  
9 business with them?

10 A. We've been affiliated with them for 15  
11 years. They've been utilizing the Where Food Comes  
12 From logo and QR code for about a year now.

13 (Whereupon, Deposition Exhibit No. 7, Sysco  
14 Corporation Box Design, was marked for  
15 identification.)

16 Q. (By Ms. Burbach) Okay. I'm going to hand  
17 you what's been marked as Exhibit 7. It's IMI 21.  
18 Can you tell me what this document is?

19 A. This is a box design that was utilized by  
20 Sysco Corporation within their New Mexico and Texas  
21 distribution centers.

22 Q. Are they still using this?

23 A. This box?

24 Q. Yeah.

25 A. I'm not sure.



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1 Q. Okay. Are they still -- are they still a  
2 member of the Where Food Comes From program?

3 A. Yes. They utilize it in different areas.

4 (Whereupon, Deposition Exhibit No. 8,  
5 Bonsmara Natural Beef Logo, was marked for  
6 identification.)

7 Q. (By Ms. Burbach) I'm handing you  
8 Exhibit 8. It begins with IMI 17 and it goes through  
9 IMI 20. Could you please identify this exhibit.

10 A. Yeah. This is a copy of the Bonsmara  
11 Natural Beef logo in New Mexico with the corresponding  
12 QR code.

13 Q. And is this one of the brands you were able  
14 to work with through Sysco?

15 A. Yes.

16 Q. What kind of -- oh, it's beef. I see that.

17 A. Yeah. Bonsmara is a breed of beef and a  
18 brand.

19 (Whereupon, Deposition Exhibit No. 9,  
20 Heinen's Case Cling-Later Version, was marked for  
21 identification.)

22 Q. (By Ms. Burbach) Okay. Exhibit 9, if you  
23 could look at that and identify that. It's marked IMI  
24 98.

25 A. Uh-huh.



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1 Q. What is this particular document?

2 A. This is a later version of a case cling  
3 that's being utilized by Heinen's. I believe they  
4 printed this on a card so consumers can pick it up  
5 when they enter the store.

6 Q. And I see at the bottom in very small print  
7 it says, "Every meal has a story. Discover it at  
8 wherefoodcomesfrom.com/heinen's"?

9 A. Yep.

10 Q. So is this again a QR code in the  
11 right-hand corner that users can use to click to their  
12 site?

13 A. Correct.

14 (Whereupon, Deposition Exhibit No. 10,  
15 Heinen's Price and Pound Logo, was marked for  
16 identification.)

17 Q. (By Ms. Burbach) Will you please identify  
18 Exhibit 10, which is marked IMI 99.

19 A. This is the actual price and pound logo  
20 approved with the logo and the incorporated QR code  
21 for Heinen's.

22 Q. For Heinen's?

23 A. Yep.

24 Q. And you said they've been using this for  
25 about a year, right?

1           A.    It's been going through the process for  
2 about a year.  It's been in the stores for about six  
3 months.

4           Q.    Okay.

5           A.    So it's a -- yeah.

6                   (Whereupon, Deposition Exhibit No. 11,  
7 Article re History of Where Food Comes From and  
8 Heinen's Relationship, was marked for identification.)

9           Q.    (By Ms. Burbach) All right.  Let's take a  
10 look at Exhibit 11.  Would you please identify what is  
11 shown in Exhibit 11.  It's -- by the way, I can't see  
12 what numbers it is kind of right off.  It looks like  
13 IMI 100 through 101.

14          A.    Yep, 100 through 101.

15                   This is a story that a contract employee  
16 for us, an independent freelance writer in the  
17 industry who's also a part-time employee for us, wrote  
18 to describe the introduction of Where Food Comes From  
19 into Heinen's and what specifically we were doing with  
20 it.

21          Q.    Do you know if this story was published?

22          A.    I don't think it has been published yet.  
23 We've had -- we've had some media outlets look at it  
24 and potentially use it as a basis for their own  
25 stories, but I don't know that this one has been



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1 printed in its entirety anywhere.

2 Q. Okay.

3 A. You may be able to tell me differently than  
4 that, though.

5 Q. Okay. Oh, and do you have an idea as to  
6 when that document was created?

7 A. This one?

8 Q. Yeah.

9 A. I would say it's within the last three or  
10 four months.

11 Q. Okay.

12 A. It's relatively new, relatively recent.

13 (Whereupon, Deposition Exhibit No. 12,  
14 Press Release re Where Food Comes From Launch in  
15 Heinen's Stores, was marked for identification.)

16 Q. (By Ms. Burbach) Please take a look at  
17 Exhibit 12, which is marked IMI, I believe, 102 and  
18 103.

19 MS. BURBACH: Sorry it cut off, Frank.

20 MR. BARRIE: That's okay. I have it.

21 MS. BURBACH: Okay. Great.

22 A. This is our formal announcement of Heinen's  
23 launching the Where Food Comes From program in their  
24 store. And this was after they'd actually been using  
25 the code in the store for a pretty significant amount



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1 of time.

2 They were -- they really wanted to test the  
3 concept and see how consumers liked it before they  
4 wanted to make a significant public push.

5 Q. (By Ms. Burbach) Okay. And who -- do you  
6 know who authored this particular press release?

7 A. This was authored by our media contact Jay  
8 Pfeiffer who handles our investor relations.

9 Q. Okay. And do you know if this was  
10 published or distributed by any third parties?

11 A. Yes. Each -- as a public company, we have  
12 to distribute each one of our public announcements  
13 over one of two news wires, and we utilize PR News  
14 Wire which, in essence, distributes that to all news  
15 agencies around the globe.

16 Q. And is there a second one? You said two.

17 A. I think it's called Business Wire. There  
18 may be more than that, but there's -- there's two  
19 services most public companies use.

20 Q. Okay.

21 A. And PR News Wire is the one that we use.

22 (Whereupon, Deposition Exhibit No. 13, Four  
23 Daughters Land and Cattle Point of Purchase Material,  
24 was marked for identification.)

25 Q. (By Ms. Burbach) Okay. Please take a look



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1 at Exhibit 13, which is IMI 10 through IMI 14.

2 A. Yes.

3 Q. And can you identify what this document is?

4 A. This is point of purchase material  
5 specifically focused on Four Daughters Land and  
6 Cattle, one of our producers that we work with. And  
7 this looks like the point of purchase material that  
8 would have been used in restaurants and casinos in the  
9 Albuquerque region.

10 Q. And has this processor gone through the  
11 Where Food Comes From verification program?

12 A. Yes. Yes.

13 (Whereupon, Deposition Exhibit No. 14,  
14 Marketing Materials, was marked for identification.)

15 Q. (By Ms. Burbach) Okay. Please look at  
16 Exhibit 14, which is IMI 104 through 105. If you  
17 could identify that for the record.

18 A. This is one of our printed marketing  
19 materials that we would send out to a retailer or  
20 restaurant describing the service and how we would  
21 promote it in their store.

22 Q. And do you know when this has been  
23 distributed?

24 A. This is a relatively new one, too, and it  
25 would have been distributed this year, in 2011.



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1 Q. Do you have any idea of how many copies  
2 were distributed?

3 A. Less than 50.

4 Q. Okay.

5 A. There aren't really that many retail  
6 organizations. It's a fairly consolidated industry,  
7 so we can target them pretty specifically.

8 (Whereupon, Deposition Exhibit No. 15,  
9 National Beef Marketing Brochure, was marked for  
10 identification.)

11 Q. (By Ms. Burbach) Please take a look at  
12 Exhibit 15, which is -- I don't know. I can't tell  
13 what the -- I think it's 106 through 107.

14 A. Yes.

15 Q. If you could let me know what this document  
16 is.

17 A. This is a marketing brochure established by  
18 one of our customers, National Beef, on a very, very  
19 high-end niche product line that they call Vintage  
20 Natural Beef, and it is one of the products that we  
21 certify as Where Food Comes From approved, and this is  
22 their marketing brochure.

23 Q. Do you know when you started working with  
24 them in the Where Food Comes From program?

25 A. We started working with them early in 2011,



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1 late 2010.

2 Q. Okay. And, I'm sorry, how is this  
3 distributed? What is this particular piece of  
4 material?

5 A. This is the marketing that this brand and  
6 this company uses to promote their product, so they  
7 would do that to food service and retail  
8 establishments as well.

9 (Whereupon, Deposition Exhibit No. 16,  
10 Marketing Materials, was marked for identification.)

11 Q. (By Ms. Burbach) Let's take a look at  
12 Exhibit 16, which is IMI 108 through 111. And if you  
13 could identify this document.

14 A. This is further marketing description of  
15 the service and how potential food branded products  
16 can utilize Where Food Comes From within their  
17 program.

18 Q. And was this created by IMI?

19 A. Yes.

20 Q. And how is this distributed?

21 A. This is available online and also  
22 distributed to all food producers and brands that are  
23 looking to help promote their products.

24 Q. So would consumers, individual, like, food  
25 consumers, be able to access this or have copies of



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1 this?

2 A. Yes. Yes.

3 (Whereupon, Deposition Exhibit No. 17,  
4 Folder For Marketing Materials, was marked for  
5 identification.)

6 Q. (By Ms. Burbach) I'm handing you what's  
7 been marked as Exhibit 17, which is Bates number IMI  
8 112. Could you please identify this document.

9 A. This is a folder that all the marketing  
10 material would be enclosed inside.

11 Q. And it was created by IMI?

12 A. Correct. Yep.

13 (Whereupon, Deposition Exhibit No. 18,  
14 Media Q&A, was marked for identification.)

15 Q. (By Ms. Burbach) Okay. Here is  
16 Exhibit 18, which is IMI 123 through 115.

17 A. This is our media Q and A, so this is  
18 distributed to all media organizations that are  
19 looking to talk about Where Food Comes From and the  
20 program. This provides information for them, and a  
21 pretty significant number of consumers would have  
22 access to this, too.

23 Q. Is this available on your website?

24 A. Yes.

25 Q. And how is this intended to be used?



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1           A.    This is intended to be used to answer  
2    initial questions that media representatives and  
3    consumers may have about how we maintain the integrity  
4    of the program, does -- is this organic or is this --  
5    you know, what does Where Food Comes From really mean  
6    in the sense of what a consumer can expect.

7                   (Whereupon, Deposition Exhibit No. 19,  
8    Example of a Producer's Story, was marked for  
9    identification.)

10           Q.    (By Ms. Burbach) Okay. Please look at  
11    Exhibit 19, which is IMI 116. If you could, please  
12    identify this for the record.

13           A.    As I mentioned earlier, each one of our  
14    participating producers, farmers, ranchers has the  
15    opportunity to voluntarily participate and tell their  
16    story more effectively to consumers. So in addition  
17    to sending us pictures of their operation of their  
18    family or things that they're proud of in their  
19    operation, they tell us more about the story and then,  
20    in a hundred words or less, describe what they would  
21    want to tell consumers about the way they produce  
22    food.

23           Q.    Okay. And then in order for them to be  
24    featured, though, they'd still have to go through the  
25    verification process?



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1           A.    Yes.  This is -- this is subsequent to  
2   their approval as a --

3           Q.    I see.

4           A.    -- as a participating entity.  And, again,  
5   it's voluntary.  They don't have to participate.  They  
6   have the option to participate.

7           Q.    I want to use this as a representative  
8   example of some of your advertising and talk to you a  
9   little bit about how you use your trademark in your  
10  advertising.

11                   Do you see where it says, "With the Where  
12  Food Comes From supplier feature program"?

13          A.    Uh-huh.

14          Q.    You have a trademark symbol there.  
15  Sometimes I've seen a registration symbol.  Are you  
16  consistently using a trademark or registration symbol?

17          A.    We are using the registration.  This was an  
18  earlier version of this document.  So, yeah, we use  
19  the registered trademark.

20          Q.    And do you do that consistently --

21          A.    Yes.

22          Q.    -- throughout your marketing materials?

23          A.    Yes.  Yes.

24          Q.    Like your trademark lawyer told you to?

25          A.    Yes.



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1 Q. At the bottom of that section, it says,  
2 "Where Food Comes From-Connecting Producers and  
3 Consumers Every Day." Do you see that?

4 A. Uh-huh.

5 Q. Is that a tag line or a slogan your company  
6 has adopted in connection with the Where Food Comes  
7 From program?

8 A. Yes. I believe specifically we've moved to  
9 protect this phrase, "Protecting Consumers and  
10 Producers Every Day" and the "Every Meal Has a  
11 Story-Discover It."

12 Q. I see you've got your copyright notice on  
13 there, too. Does your copyright notice at the bottom  
14 usually appear on your webpages or your printed  
15 materials?

16 A. Uh-huh. I will admit I'm not responsible  
17 for ensuring that is consistently done everywhere, but  
18 it is our -- my intention and our effort.

19 (Whereupon, Deposition Exhibit No. 20,  
20 Timber Ridge Label, was marked for identification.)

21 Q. (By Ms. Burbach) I'm going to hand you  
22 Exhibit 20, which is IMI 117. Could you identify this  
23 document, please.

24 A. Yes. This is a copy of a label pursued by  
25 a customer of ours that's actually a ranch and a



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1 branded program called Timber Ridge, which is a beef  
2 jerky line that they had utilized flax-fed ingredients  
3 in their feed for the cattle, and that was to -- the  
4 consumer objective was to increase the Omega content  
5 within the beef. And that process and then the  
6 corresponding QR code is one that we worked with them  
7 to verify through the USDA and then to achieve  
8 labeling.

9 Q. Is this particular business featured  
10 anywhere on your website?

11 A. Yes, they are.

12 Q. And do you highlight the fact that they're  
13 healthier or that their product is of a higher  
14 quality?

15 A. We promote the claims that they make about  
16 the food, which yes, that's their objective, to convey  
17 to consumers that because their product is -- has been  
18 fed in this specific way, that the Omega 3 content of  
19 that meat is higher than normally would be assumed.

20 Q. Okay. Let's move on to the next exhibit.

21 (Whereupon, Deposition Exhibit No. 21,  
22 Press Release re Where Food Comes From Brand Launch,  
23 was marked for identification.)

24 Q. (By Ms. Burbach) Exhibit 21, IMI 94  
25 through 97, and I think there are a couple of



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1 documents actually stapled together here, so I'll ask  
2 you to take a look at it. Can you identify IMI 94 and  
3 95, the first two pages of Exhibit 21?

4 A. Yes. This is our initial press release.  
5 Again, as a public company, we have to be careful  
6 about how we release information, but this is our  
7 official launch of the Where Food Comes From brand and  
8 the website itself to producers and consumers.

9 Q. And you say "official launch." Had you  
10 informally launched it prior to this date?

11 A. Yes.

12 Q. And the date on this is March 2nd, 2010?

13 A. Uh-huh.

14 Q. Okay. And do you know who authored this  
15 particular press release?

16 A. Jay Pfeiffer, our investor relations  
17 individual.

18 Q. Okay. And it says, "IMI Global launches,  
19 quote, 'Where Food Comes From registration symbol,'  
20 quote, program to build consumer confidence in the  
21 food supply chain." Do you see that?

22 A. Uh-huh.

23 Q. Did you or anyone in your company  
24 proofread -- you know, approve of this before it was  
25 released?



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1 A. Yeah.

2 Q. Okay. Good to know. So this all contains  
3 accurate information, then?

4 A. Yes.

5 Q. And then I want to ask you about the last  
6 two pages of this exhibit, which are IMI 96 and 97.  
7 What's the date of this press release?

8 A. November 30th, 2010.

9 Q. And what is the feature of this particular  
10 press release?

11 A. The feature is the inclusion of Dr. Gary  
12 Smith, who sits on our board of directors, is one of  
13 the most well-known world renowned meat scientists in  
14 the world, to blog at Where Food Comes From on current  
15 issues that he felt pertinent to the food industry.

16 Q. And does he focus on the fact that  
17 consumers want more -- I'm reading from this press  
18 release -- health conscious, environmentally focused  
19 consumers? Is it his intention that that would help  
20 promote that?

21 A. Yes. And, again, to be clear, our  
22 intention is to tell the truth of agriculture and to  
23 provide that information authentically to consumers.

24 So there is a significant number of  
25 consumers, and specifically within our purview, that



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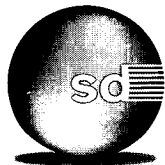
1 are very focused on health, sustainability, animal  
2 welfare attributes of the products that are being  
3 produced. . And our whole objective -- and I believe  
4 that it's consistent with Dr. Smith's objective -- is  
5 to authentically tell the truth of that.

6 Q. Okay.

7 MS. BURBACH: We're going to take a break  
8 from exhibits for a minute. I'm going to designate  
9 this portion of the deposition confidential,  
10 commercially sensitive trade secret information,  
11 pursuant to the protective order that's in place,  
12 Frank.

13 MR. BARRIE: Okay.

14 Q. (By Ms. Burbach)  
15  
16  
17  
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22  
23  
24  
25



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1  
2  
3  
4  
5 MS. BURBACH: Okay. I think we can then  
6 move back on to no longer designating it trade secret  
7 commercially sensitive information.

8 MR. BARRIE: Okay.

9 Q. (By Ms. Burbach) We've talked about this  
10 in sort of advertising, we've talked about it with  
11 what services you offer, but I want to specifically  
12 focus on the trade channels that IMI uses to offer and  
13 deliver its services through the Where Food Comes From  
14 program.

15 A. Okay.

16 Q. So what kind of trade channels -- you don't  
17 have to go into all the great details again about  
18 exactly how this -- you know, unless I ask you, but  
19 basically what trade channels do you guys use in order  
20 to deliver your services to both your producers, your  
21 consumers, your retailers, anybody else that's part of  
22 the program?

23 A. Well, it's primarily through the Internet,  
24 so all of our customers, both the producers and the  
25 consumers, can utilize Wherefoodcomesfrom.com to



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1 access and to utilize the service and then probably  
2 most specifically through the use of SmartPhones and  
3 the reading of the QR code technology with those  
4 phones are the primary way that we would -- the  
5 channels that we would go through.

6 Q. Okay. How about any in-person delivery of  
7 your services?

8 A. Yes. We have -- for example, we would  
9 have... For Heinen's, they may, during Memorial Day  
10 or the 4th of July, would want to have product being  
11 cooked on site, and in the case where we do that -- a  
12 lot of times producers would participate in that as  
13 well. So the actual producers would be in the store  
14 delivering the message of Where Food Comes From and  
15 the product that they're producing to the consumers  
16 that are walking through the store.

17 Q. And how about your auditing services? Are  
18 those provided in person a lot of the time?

19 A. Yes. Yes. The majority of the time those  
20 services are performed on site.

21 Q. Are your services offered via telephone?

22 A. Yes.

23 Q. How about at grocery stores?

24 A. Yes. Yes. Of course.

25 Q. How about restaurants?

1 A. Yes.

2 Q. On food products packaging itself?

3 A. Yes.

4 Q. I didn't say that very well. Let me say  
5 that again. On the packaging of food products, are  
6 your services delivered through that?

7 A. Yes. Of course.

8 Q. Are there any other trade channels that we  
9 haven't talked about that any --

10 A. No.

11 Q. Okay. So in talking about the  
12 sophistication of your potential customers and the  
13 people that you target, what is the level of  
14 sophistication of anyone that may want to use IMI's  
15 services in connection with the Where Food Comes From  
16 trademark?

17 A. I believe that a portion of our customers  
18 and the early adopters of our service can be very  
19 sophisticated, can have the correct technology, could  
20 understand how to participate in the program beyond  
21 probably even what I could do.

22 But, I also believe that there's a very  
23 strong push and a movement that I would define as  
24 this: That in 25 years, I believe that people will  
25 look back on 2011 and chuckle at the fact that we



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1 don't know where our food comes from or the source of  
2 origin on our food. And in being able to move the  
3 majority of consumers which would be much less  
4 sophisticated to the point that they may not utilize a  
5 QR code, they may not even be on the Internet, but  
6 they darn sure can look at a stamp of approval that  
7 they recognize and that they trust and be able to say  
8 that, I may not know the source of origin of that  
9 food, but somebody does and somebody has verified it.

10 So initial adopters of the program will be  
11 relatively sophisticated. In the long-term and maybe  
12 not even the long-term but the mid term, the short  
13 term would be that much less sophisticated consumers  
14 would want to participate and learn to rely on the  
15 program.

16 Q. What about online users? Do they require  
17 much sophistication to be able to utilize your  
18 services, look at your website?

19 A. No. No. It's a very -- as long as you can  
20 answer or type in the phrase "Where Food Comes From,"  
21 that's -- that's the extent of what an online user  
22 would need to do.

23 Q. Okay. I moved directions a little bit.

24 (Whereupon, Deposition Exhibit No. 22,  
25 Press Release Distribution, was marked for



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1 identification.)

2 Q. (By Ms. Burbach) Well, let's look at the  
3 next exhibit. It's Exhibit 22, and it's a thick one.  
4 It's IMI 118 through 156. And if you could look  
5 through that and tell me what's contained in this  
6 particular exhibit.

7 A. The first one is -- again it's one of the  
8 news services that would pick up our PR News Wire  
9 press release on Heinen's Fine Foods. This is a  
10 redistribution within stock or market review of our  
11 press release.

12 Q. And you're looking at, for the record, IMI  
13 118?

14 A. Yeah.

15 Q. Okay. The page number?

16 A. Yeah.

17 Q. Could you look at Page 120 and identify the  
18 source of this publication?

19 A. Green Technology World.

20 Q. Do you know much about what they are or the  
21 nature of their publication?

22 A. I don't specifically, but just looking  
23 through it, it's a sustainable building, sustainable  
24 business opportunities and... Yeah.

25 Q. And above the title of the article, it



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1 says, "Green Technology News." Do you see that?

2 A. Yes.

3 Q. Are your press releases or articles  
4 featured about you often located in areas where  
5 they're talking about green technology or sustainable  
6 technology?

7 A. Many times, yes.

8 Q. And going to Page 122, are you familiar  
9 with the Tmcnet.com publication?

10 A. I am not.

11 Q. I'm not either. How about Page 125? Can  
12 you identify this document?

13 A. Oh. Fancy Food Show. Uh-huh.

14 Q. What's the Fancy Food Show?

15 A. Fancy Food Show is the -- this year it was  
16 in D.C., I believe, or Baltimore. That was -- it's  
17 all of the niche organic, green, whatever -- the  
18 consumer trend show of shows.

19 Q. Like a trade show?

20 A. Yeah, a trade show. Did they pick us up?

21 Q. It looks like it. Is this a Facebook page  
22 for the Fancy Food?

23 A. Uh-huh. Well...

24 Q. And can you see on Page 126 that they  
25 picked up the press release about two-thirds of the



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1 way down?

2 A. Yes.

3 Q. Is that an example of an organization that  
4 features green or sustainable food agricultural  
5 programs that would feature your particular press  
6 release?

7 A. Correct.

8 Q. Page 127, can you identify this particular  
9 publication?

10 A. This -- I'm having a little bit of a hard  
11 time reading it.

12 Q. Me, too.

13 A. This looks more like a technology site that  
14 would be gadgets and technology associated with  
15 SmartPhones and mobile devices.

16 Q. And do you see that it's featuring the  
17 program Where Food Comes From with the QR codes?

18 A. Uh-huh. Yes.

19 Q. Look at Page 130 through 132. Could you  
20 identify this publication?

21 A. Yes. Meetingplace.com.

22 Q. And can you tell me about that particular  
23 publication?

24 A. Meeting Place is the leading source of news  
25 and information, daily information, for the meat and



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1 poultry industry.

2 Q. Okay. Looking at Page 133 through, I  
3 think, 134, I think that's where it ends.

4 A. Uh-huh.

5 Q. It looks like somebody wrote on the top,  
6 "Www.foodbev.com." Do you know who wrote that?

7 A. That looks like Catherine Griffin's  
8 handwriting.

9 Q. Is she an employee of IMI?

10 A. Yes, she's an employee of IMI Global.

11 Q. And are you familiar with the Foodbev.com  
12 website?

13 A. I'm not. I've heard of it, but I don't go  
14 there.

15 Q. But you can see that they've posted your  
16 press release?

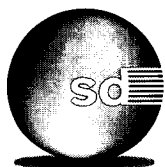
17 A. Yes. Even -- they've actually -- they  
18 haven't posted our press release; they've written a  
19 story based on our press release.

20 Q. Oh, you're right. Right.

21 Okay. Can you turn to 137, please. Are  
22 you familiar with the Food Beast publication?

23 A. I am not.

24 Q. Do you see that they have written an  
25 article about your Where Food Comes From program?



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1 A. I do.

2 Q. Is that your press release?

3 A. Again, that's a story written on our  
4 press -- with our press release used as a basis for  
5 it.

6 Q. I want you to just peek back really quick  
7 at Exhibit 21. It's one of the press releases.

8 A. Okay.

9 Q. And at the top it says -- do you see where  
10 it says, "Www.wherefoodcomesfrom.com showcases  
11 farmers, ranchers and processors who adhere to best  
12 practices from farm to fork"? Do you see that?

13 A. Uh-huh.

14 Q. Is that something you guys wrote -- that's  
15 right, you had someone write this for you on your  
16 behalf, right?

17 A. Yes. All of our press releases are written  
18 by an employee.

19 Q. What does it mean when you say "from farm  
20 to fork"?

21 A. "From farm to fork," technically the phrase  
22 is traceability, so the ability to maintain identity,  
23 preservation, segregation throughout the production  
24 processing and distribution and then retail of  
25 specific products.



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1 Q. Are you aware if that's a term-of-art in  
2 the food industry?

3 A. Do you mean do other people use it all the  
4 time?

5 Q. That's what I mean.

6 A. Yes.

7 Q. Which brings me back to the exhibit we were  
8 talking about.

9 A. From -- yeah. There are several of those,  
10 "from gate to plate," "from farm to fork."

11 Q. Gotcha.

12 MS. BURBACH: Let's move on to the next  
13 exhibit, and this exhibit is marked trade secret  
14 commercially sensitive information, although I don't  
15 think that the discussion we will have is designated  
16 confidential, but I do want to remind everyone that  
17 this document is confidential, so I want to make sure  
18 we don't publish that.

19 (Whereupon, Deposition Exhibit No. 23,  
20 Sysco Supplier Licensing Agreement, was marked for  
21 identification.)

22 Q. (By Ms. Burbach) I'm handing you what's  
23 been marked as Exhibit 23, which is IMI 1 through 9.  
24 And can you identify this document?

25 A. This is our supplier licensing agreement



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1 within the Sysco program. And this is signed  
2 specifically by one of the processors within the Sysco  
3 family.

4 Q. And is this the type of agreement that one  
5 of your partners would sign in order to get a license  
6 to use the Where Food Comes From trademark?

7 A. Anybody who utilizes the mark on a retail  
8 or food service basis has to sign one of these  
9 agreements.

10 Q. Okay.

11 A. Not the Sysco supplier agreement. This is  
12 within the Sysco environment.

13 Q. I see. I see. But they would have an  
14 agreement with you --

15 A. Yes.

16 Q. -- that would be similar to that?

17 Okay. How is this -- what does this  
18 agreement refer to, then, specifically?

19 A. This is the -- within the Sysco  
20 organization, and those -- it primarily is because of  
21 the payment terms.

22 Q. Okay.

23 A. Who's paying the licensing fee.

24 Q. Got it.

25 (Whereupon, Deposition Exhibit No. 24,



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1 Frank Barrie Business Plan, was marked for  
2 identification.)

3 Q. (By Ms. Burbach) I want to turn your  
4 attention to Exhibit 24, which is marked FB 35 through  
5 46. And I will represent to you that this was  
6 produced by The Applicant, Frank Barrie, entitled,  
7 "Business Plan."

8 MR. BARRIE: Which page are you on, Cheryl?

9 MS. BURBACH: I'm sorry. I'm on  
10 Exhibit 24, which is your business plan.

11 MR. BARRIE: Okay. What's the page?

12 MS. BURBACH: 35 through 46 FB.

13 MR. BARRIE: 35 -- I'm not finding it.  
14 Very strange.

15 MS. BURBACH: Exhibit 24.

16 MR. BARRIE: Yeah.

17 MS. BURBACH: It would have been right  
18 after that big, big chunk of -- no. It would have  
19 been after the Sysco supplier agreement.

20 MR. BARRIE: Oh. At the front of the  
21 package, okay.

22 MS. BURBACH: No. After the Sysco contract  
23 we just went through. It should be immediately behind  
24 that.

25 MR. BARRIE: The Sysco contract we went



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1 through was marked --

2 MS. BURBACH: Exhibit 23.

3 MR. BARRIE: 9, right?

4 MS. BURBACH: Right.

5 MR. BARRIE: And then Page 10 is

6 Exhibit 13.

7 MS. BURBACH: I'm actually referring to the  
8 exhibits I sent you two nights ago. You received it  
9 yesterday, and it's your business plan that you  
10 produced.

11 MR. BARRIE: Yeah. Sent to me two nights  
12 ago. Hold on one second.

13 MS. BURBACH: Sure. Why don't we go off  
14 the record while he's doing that.

15 (Off the record.)

16 MS. BURBACH: We'll go back on the record.

17 Q. (By Ms. Burbach) Have you had a chance to  
18 review Exhibit 24?

19 A. I have.

20 Q. And I'd like to draw your attention to  
21 Page -- there are handwritten numbers on it, so it's  
22 handwritten 35 through 46.

23 A. Uh-huh.

24 Q. I'd direct your attention to the  
25 handwritten 37, "Personal Goals." Are you aware that



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1 this is a business plan that The Applicant created and  
2 wrote?

3 A. Yes.

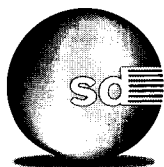
4 Q. Okay. And in particular, the second  
5 paragraph talks about "Sustainable agriculture is  
6 agriculture that protects our natural resources and  
7 carefully considers the cost of the land and the  
8 healthful lives of consumers by how food is produced  
9 and distributed.

10 Local agriculture means the preservation of  
11 family farms and a way of life with the added benefit  
12 of avoiding the environmental and economic costs of  
13 transporting food great distances when nutritious food  
14 could be produced much closer to the consumers' home  
15 community." Do you see that?

16 A. Uh-huh.

17 Q. Has IMI discussed these particular issues  
18 on its website in relation to the Where Food Comes  
19 From program?

20 A. Yes. Yes. We, in many ways, agree  
21 entirely with the preservation of family farms. And,  
22 again, our distinction is not that big family farms  
23 are bad family farms or small family farms are good  
24 family farms, but we do believe that the promotion of  
25 family and the fact that 98 percent of all agriculture





1 is produced through family businesses, so we're very,  
2 very focused on that.

3 And we're also very focused on, although  
4 source verification does not necessarily mean that a  
5 food product is safe -- and we're very, very careful  
6 to make that distinction -- we do believe that source  
7 verification of a product is an indication of quality  
8 purely because of the measurability and the ability to  
9 track and to monitor what that product is and how it's  
10 been produced.

11 Q. Do you believe that the Where Food Comes  
12 From program would promote sustainable agricultural  
13 practices and local farms?

14 A. Yes. If they were verified that they are  
15 engaged in those practices, most definitely. All food  
16 produced is local to somebody that lives close to it.

17 Q. Fair enough. I'd ask you to turn to the  
18 handwritten Page 39. It starts out with Roman Numeral  
19 III, "Business Description"?

20 A. Uh-huh.

21 Q. And it says,  
22 "Knowwhereyourfoodcomesfrom.com will be a website  
23 designed to promote small sustainable local  
24 agriculture by encouraging consumers to eat locally  
25 grown foods which are produced in a healthy way or



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1 organically grown."

2 And then the last sentence says, "When  
3 certain foods cannot be grown locally,  
4 Knowwhereyourfoodcomesfrom.com will promote foods such  
5 as coffee, tea, cacao, bananas, pineapples, et cetera,  
6 that are grown in a sustainable and healthy way and  
7 are fairly traded." Do you see that?

8 A. Uh-huh.

9 Q. Does IMI discriminate with regard to the  
10 particular farms or sizes of farms, I mean, that it  
11 would not include these organizations that are  
12 identified here?

13 A. No, we do not discriminate. We would  
14 include all commodities, all producers, large or  
15 small.

16 Again, the distinction that we make is the  
17 willingness of a producer to stamp their product with  
18 their name through the verification of source of  
19 origin and traceability.

20 Q. Okay. Looking at Paragraph Number 1,  
21 "Listing of farmers markets," does IMI currently  
22 provide a listing of current farmers markets?

23 A. No, we do not, but again, that's because we  
24 have not identified a farmers market which would  
25 comply with the standards and the requirements of



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1 Where Food Comes From.

2 Q. Is it possible that there would be a  
3 farmers market that would comply and would be able to  
4 take advantage of your program?

5 A. Yes, most definitely.

6 Q. 2, "Listing of local farmers and producers  
7 of food." Does the Where Food Comes From program  
8 provide a listing of local farmers and producers of  
9 food?

10 A. Yes.

11 Q. I think we talked about that earlier.

12 A. Yes.

13 Q. How about listing of community-supported  
14 agriculture farms? Do you have an understanding of  
15 what community-supported agriculture farms are?

16 A. I do. I do.

17 Q. Could you tell us what that is, please?

18 A. Community support is a farm or operation  
19 which utilizes the community that it's engaged in and  
20 that it participates with to share in the production  
21 and then the harvest of those products per some  
22 agreement that they have at the beginning.

23 Q. Okay. Is it possible that  
24 community-supported agriculture farms could be  
25 verified or take advantage of the Where Food Comes



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1 From services that you offer?

2 A. Yes. In fact, those are probably much more  
3 likely based on the requirements of Where Food Comes  
4 From to be a potential source of product than a  
5 farmers market today because you know where the food  
6 was produced.

7 Q. Okay. "Listing of local farms" -- I'm  
8 looking at Paragraph 4 -- "Listing of local farm or  
9 garden-to-table or local-grower-to-table restaurants."  
10 Do you see that?

11 A. Yes.

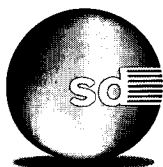
12 Q. Could those or are those organizations able  
13 to participate in the Where Food Comes From program?

14 A. Yes, they are able to. It's very difficult  
15 to comply because, again, the verification of the fact  
16 that they are actually purchasing products  
17 consistently locally or from regional or organic or  
18 different types of producers is -- it's something  
19 that's very easy to say but hard to verify and  
20 actually do.

21 Q. But you do work with restaurants now and  
22 target restaurants, don't you?

23 A. Yes.

24 Q. If you turn to the next page, Paragraph 5,  
25 "Listing of food co-ops." Are food co-ops able to



1 participate in the Where Food Comes From program?

2 A. Yes.

3 Q. Okay. And let's go to Paragraph 6.

4 "Listing of providers of fair traded tropical foods."

5 Are providers of fair traded tropical foods able to  
6 participate in the Where Food Comes From program?

7 A. Yes.

8 Q. Paragraph 7. "Area on the website devoted  
9 to review of books and literature, films, education  
10 programs and seminars which promote local sustainable  
11 organic agriculture."

12 Does IMI currently have any webpages  
13 devoted to or that feature book reviews or films or  
14 educational programs and seminars which promote local  
15 sustainable organic agriculture?

16 A. We don't have a site or a page that  
17 specifically focuses on reviews, but we do have  
18 information about different individuals that are  
19 highly educated or highly proficient in this area;  
20 films, new topics, things that are going on, yes.

21 Q. Okay. Looking at Paragraph 8, "Featured  
22 articles on local growers and providers of food and  
23 related subjects," and it gives a number of examples,  
24 which I'm not asking you to look at those -- I mean to  
25 answer this in relation to those particular examples,



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1 but does the IMI website which bears the Where Food  
2 Comes From trademark feature articles on providers of  
3 food or local growers?

4 A. Yes.

5 Q. Paragraph 9, "Areas on the website for  
6 recipes using fresh and unprocessed foods readily  
7 available from local agricultural sources." Does  
8 Where Food Comes From websites have a place where  
9 recipes are available?

10 A. Yes.

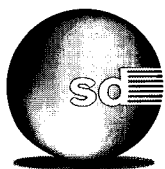
11 Q. How about Paragraph 10, "Area on the  
12 website for home gardening tips on how to grow food"?  
13 Does the Where Food Comes From website have any  
14 information or articles about home gardening tips or  
15 how to grow food?

16 A. No.

17 Q. Paragraph 11 on the next page. I think you  
18 alluded to this, but does the Where Food Comes From  
19 website have news concerning local sustainable  
20 agricultural and unsustainable industrial agricultural  
21 issues?

22 A. Yes.

23 Q. And 12, does your website bearing the Where  
24 Food Comes From trademark provide links to other  
25 related websites?



1           A.    That could be something that we do.  I  
2   don't know specifically if we do that today, but that  
3   definitely could be something that we could --

4           Q.    Well, you provide links to producers,  
5   right?

6           A.    Correct.

7           Q.    And you provide links to other, like,  
8   governmental agencies?

9           A.    Yeah.  Yes.

10          Q.    Okay.  So now that you've seen the business  
11   plan and have had an opportunity to learn more about  
12   The Applicant and the intention of how those services  
13   are to be used, I want to focus on the proceeding at  
14   issue.

15                   Are you aware of the fact that The  
16   Applicant has sought to register a design mark for  
17   Knowwhereyourfoodcomesfrom.com for promoting health  
18   and environmental awareness within people so that they  
19   can lead a clean and healthy life, promoting public  
20   awareness of shopping locally, promoting public  
21   awareness of the need for sustaining local agriculture  
22   and promoting the goods and services of others by  
23   providing a website on which users can link to local  
24   agriculture sources?

25          A.    Yes.



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1 Q. And I just want to break that down a little  
2 bit. Looking at the first list of services,  
3 "Promoting health and environmental awareness within  
4 people so they can lead a clean and healthy life,"  
5 would your services enable people to do that?

6 A. Yes, per the -- per their definition of  
7 promoting health and environmental --

8 Q. Sure.

9 A. -- yes, but the ability to distinguish  
10 between, as we talked about, the Omega-enhanced beef  
11 that a consumer can make that decision, yes, per their  
12 personal preferences of what health and environmental  
13 awareness means.

14 Q. All right. And how about the promoting  
15 public awareness of shopping locally? Could your  
16 services be used by consumers to promote that?

17 A. Yes.

18 Q. And how so?

19 A. Well, again, any food that's produced in an  
20 area is local to somebody that lives within that area.  
21 Whether they're able to actually purchase that product  
22 is irrelevant. There is the opportunity to understand  
23 more about the food that's produced locally.

24 And I would say that that, in addition to  
25 animal welfare, is one of the critical parts of what



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1 consumers today are looking for. And, you know,  
2 again, the definition of local is different, and many  
3 people look at within the United States as local.  
4 Many people look at China as not local.

5 Q. Right.

6 A. So the definition of these phrases is  
7 critically important to the distinction. And, again,  
8 the authenticity and the truthfulness is the source of  
9 origin on the food.

10 Q. If I as a consumer wanted to buy beef from  
11 a local producer and you had a producer on your site  
12 that was local to me, would I be able to find that?

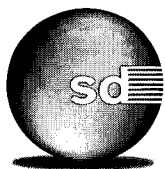
13 A. Yes.

14 Q. Would I be able to use that to determine  
15 whatever I define local as, to purchase what I would  
16 consider local products?

17 A. Yes.

18 Q. Promoting -- the third type of services  
19 listed, "Promoting public awareness of the need for  
20 sustaining local agriculture." Does your website by  
21 virtue of its services promote public awareness of the  
22 need for sustaining local agriculture?

23 A. Yes. I would just phrase it differently.  
24 I would say that preserving family farms wherever  
25 their locale. So if they're producing in the



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1 hinterlands of Montana, that's local to the people  
2 that live there. So the promotion of those products  
3 within that region is -- it's critical, wherever that  
4 region is.

5 Q. How about promoting the goods and services  
6 of others by providing a website which users can link  
7 to local agriculture sources? Does your company  
8 provide those services?

9 A. Yes.'

10 Q. And I know you've talked about it in a lot  
11 of ways already. Are there any other ways that we  
12 haven't talked about where your company uses the Where  
13 Food Comes From trademark to promote the goods and  
14 services of others by linking or providing a website?

15 A. Yes. I think I've talked about it enough.  
16 If you want me to get into it more --

17 Q. No. If there's anything other than what  
18 we've already talked about.

19 A. No. No.

20 Q. I want to focus a little bit about the  
21 likelihood of confusion. Can you explain why you've  
22 opposed the application for  
23 Knowwhereyourfoodcomesfrom.com, what your  
24 understanding is.

25 A. Yes. First and foremost, we -- this is a



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1 very good business plan and it's --

2 Q. You're talking about Mr. Barrie's business  
3 plan?

4 A. Mr. Barrie's business plan is a very good  
5 business plan, and many of the same critical consumer  
6 issues and production of food issues that we see are  
7 very similar to ours, obviously.

8 The primary area of concern that we have is  
9 that we built a business focused on verifying the  
10 authenticity of claims that were made about food, and  
11 it took us a significant amount of time to create  
12 those processes and those systems where they did not  
13 exist, to create an environment where you can trust  
14 that if something's marketed in a certain way as a  
15 product that it's legitimate and truthful.

16 And there's ample example of -- there was a  
17 recent article in the Denver Post which highlighted  
18 the reality that much of the food that is sold and  
19 products that are sold in unregulated, non-regulated  
20 environments, like farmers markets, are really not  
21 what the producers are saying they are. They're not  
22 local. They may have been imported in from other  
23 regions.

24 Don't have to spend a lot of time looking  
25 at the news to know about the listeria in cantaloupe



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1 issue and the source of origin issues that existed and  
2 the non-verification that occurred within those  
3 programs.

4 So our real concern is that there does not  
5 appear to be a verification step that would require a  
6 producer that in Connecticut, New Haven, where I went  
7 to school, that a producer that's selling at a farmers  
8 market in Connecticut is actually producing that  
9 product locally. And --

10 Q. You're saying with The Applicant's  
11 trademark?

12 A. With The Applicant's trademark.

13 So the authenticity of a claim made around  
14 a farmers market or producer that would be assumed  
15 local and sustainable, there's no mechanism to prove  
16 that that is actually the case and that it's truthful.

17 So why is that dangerous for us? The  
18 reason that that is a problem for us is because that  
19 is exactly the value that we're providing to our  
20 producers and to our retail and restaurant customers  
21 is that they've done that extra step of verification  
22 to say that -- our competitor says that they're buying  
23 locally, we are proving that we're buying locally or  
24 that we're buying sustainably produced products.

25 Q. Do you believe that your services used at



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1 the Where Food Comes From program are either similar,  
2 overlapping or related to the services identified in  
3 the application for Knowwhereyourfoodcomesfrom.com?

4 A. Yes. Initially I was -- I thought that  
5 they were -- they were distinct, but the more that  
6 I've learned and understood about it, I think they're  
7 very similar. And the idea is a good one. That's --  
8 there's no way to deny that.

9 So I think we've progressed along a very  
10 similar path, and it's -- it pains me, but it is  
11 confusingly similar. And I think that where we  
12 really -- the most difficult part of this whole thing  
13 is that I really believe in what you're doing,  
14 Mr. Barrie, and I feel this is not the way that we  
15 typically do business, but it's critical for us that  
16 consumers know that the brand and the mark is truthful  
17 and authentic. And I -- without -- without control of  
18 the mark, there's no way for us to do that with any  
19 degree of confidence.

20 Q. Why do you believe consumers would find  
21 your mark Where Food Comes From confusingly similar to  
22 Knowwhereyourfoodcomesfrom.com?

23 A. Outside the obvious?

24 Q. No. State the obvious.

25 A. The obvious is that the words are very



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1 similar and the -- even the logo itself, it's -- you  
2 know, consumers want to think of their food as being  
3 produced in a natural, sustainable way, so the logo  
4 that you've currently developed with Know Where Your  
5 Food Comes From or that has been developed with that  
6 is -- has the words in a similar spot, it's got the  
7 circle, the Earth, the green. It's a very natural  
8 description, so I do believe it would be confusing for  
9 consumers.

10 Q. Would the fact that someone else is using  
11 Knowwhereyourfoodcomesfrom.com benefit from IMI's  
12 promotion of the Where Food Comes From trademark?

13 A. I believe. I believe. I know there's --  
14 and I think there's some -- there's two Delmonico's  
15 restaurants. One's in New York, in Manhattan; and the  
16 other is in -- I believe it's in Albany. I'm not sure  
17 about that, but I believe there's another restaurant  
18 there. So the case in point would be that if -- if we  
19 were working with the Manhattan Delmonico's and the  
20 Delmonico's in Albany was using the recognition of  
21 that brand to promote their restaurant with their  
22 consumers, it could -- it would be very difficult for  
23 us to defend that to Delmonico's in Manhattan that had  
24 made the decision to purchase this product, had  
25 invested the time and effort and resources necessary



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1 to get that product, and somebody else could market  
2 the same, not have gone -- not having gone through the  
3 same process.

4 Q. Well, and that kind of leads me to my next  
5 question, which is, what impact could it have if third  
6 parties are allowed to use -- or if Mr. Barrie's  
7 allowed to use Knowwhereyourfoodcomesfrom.com or  
8 something similar, what would the impact be on your  
9 ability to license the mark and what the value of the  
10 mark would mean?

11 A. It would entirely remove the value of the  
12 mark because it's not free to perform audits and to  
13 verify. There's a cost associated with that.

14 So the business model that our customers  
15 engage in is that they invest in that cost and they're  
16 able to generate higher returns because they can sell  
17 their product as being verified. So if there's  
18 another mark which has no cost, has no verification  
19 that's utilized, there is no reason for any of those  
20 restaurants or customers to want to utilize the mark  
21 that has a cost and has an expense side.

22 Q. Is it possible that your potential  
23 customers or the consuming public may believe that  
24 you're affiliated or associated with the  
25 Knowwhereyourfoodcomesfrom.com website?



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1           A.    I believe so.  I would be confused myself  
2           just looking at it that they would be affiliated.

3           Q.    And why do you think that?

4           A.    Because they're exactly the same words and  
5           the logo looks very similar.

6           Q.    Okay.

7           A.    And the concept is similar, too, the  
8           promotion of producers to consumers that would want to  
9           purchase their products for whatever reasons.

10                  So it's not just that the name's the same  
11           and the logo's the same; the basic functionality and  
12           the underriding concept is the same.  So, yes, I  
13           believe it would be very confusing.

14           Q.    If others were able to use  
15           Knowwhereyourfoodcomesfrom.com or something similar,  
16           would there be a financial impact on your business?

17           A.    Yes.  Future -- future revenue and growth  
18           and investment that we made thus far would be very  
19           difficult to recoup.

20           Q.    Would you be likely to lose licensees or  
21           not sign up new licensees?

22           A.    Yes.

23           Q.    I just want to authenticate the last two  
24           exhibits.

25                       (Whereupon, Deposition Exhibit No. 25,



1 Printout From Knowwhereyourfoodcomesfrom.com, was  
2 marked for identification.)

3 Q. (By Ms. Burbach) I'm going to hand you  
4 what -- oh, no, that's not right. I do have another  
5 thing to give you.

6 I'm going to hand you what's been marked as  
7 Exhibit 25, and I want to ask you -- oh, and can you  
8 read the Bates numbers at the bottom of that? I gave  
9 it to you before I...

10 A. IMI 157.

11 Q. Thank you.

12 MS. BURBACH: Do you have that, Frank?

13 MR. BARRIE: Oh, yes.

14 MS. BURBACH: Great.

15 Q. (By Ms. Burbach) Could you identify what  
16 is shown in that exhibit?

17 A. This appears to be a printed copy of the  
18 Knowwhereyourfoodcomesfrom.com website.

19 Q. And have you visited that website?

20 A. Yes, I have.

21 Q. And does this appear as you saw it?

22 A. Yes.

23 Q. And on the first page, I believe there's  
24 some rhetoric on there about their mission. Do you  
25 believe that, in large part, the Where Food Comes From



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1 program is in wave with the mission of this particular  
2 website?

3 A. Yes. Yes, without the focus on the term  
4 "local."

5 Q. Right.

6 A. And we've talked about that. But, yes,  
7 very similar.

8 Q. And if you would turn to the next page, do  
9 you see that this is -- what is that?

10 A. This is news, food news, so --

11 Q. At the Knowwhereyourfoodcomesfrom.com  
12 website?

13 A. Yeah. I'm sorry. The Know Where Your Food  
14 Comes From website food section.

15 Q. And does Wherefoodcomesfrom.com, your site,  
16 have a similar page?

17 A. Yes. Different stories, but yes. I  
18 believe that it looks like there are some similar  
19 stories.

20 Q. Are their subject matters related?

21 A. Yes, very.

22 (Whereupon, Deposition Exhibit No. 26,  
23 Current Version of Wherefoodcomesfrom.com Homepage,  
24 was marked for identification.)

25 Q. (By Ms. Burbach) Okay. I'm going to hand



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1 you Exhibit 26, which is IMI 162 through 177. And if  
2 you could please identify what's shown on this  
3 website -- or this document.

4 A. This is our most recent version of the  
5 homepage for Wherefoodcomesfrom.com.

6 Q. Okay. And if you look through the pages,  
7 does this appear to be a true and accurate copy of  
8 various pages from your website?

9 A. Yes, it does.

10 Q. And I think I'm going to have you look  
11 specifically at Page 168.

12 A. Yes.

13 Q. "The Families Behind Your Food"?

14 A. Yes.

15 Q. Can you explain what this section is about?

16 A. This is, again, telling the story of the  
17 producers in their own words. This is specifically  
18 the Barnaby family. Sharon Barnaby is, again, one of  
19 our approved producers, and this description of her  
20 family was written by them, by their -- I'm not sure  
21 who wrote it, but somebody within their organization,  
22 their family, wrote it. And it's very typical of the  
23 types of comments and descriptions that we get back  
24 from producers that we work with.

25 Q. Okay. If you turn to Page 170, you can see



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1 there's a list of, like, "Weight loss tips. Try  
2 soup." "Today is national guacamole day." Who knew  
3 there was such a thing? And "Food Production. Look  
4 at China versus the United States. Much more  
5 serious." Do you see that?

6 A. Yes.

7 Q. Have you seen similar topics --

8 A. That's a great article.

9 Q. That's a great article, did you say?

10 A. Yeah.

11 Q. Have you seen similar articles on the  
12 website of The Applicant, at  
13 Knowwhereyourfoodcomesfrom.com?

14 A. Yes.

15 Q. If you turn to Page 174 -- I'm just  
16 arbitrarily picking that, but is there a -- can you  
17 identify what this page is?

18 A. This is a food facts page, again, a news  
19 source with specific information that we feel would be  
20 pertinent to consumers.

21 Q. Do you think that these news link pages  
22 look similar to the ones you've seen at  
23 Knowwhereyourfoodcomesfrom.com?

24 A. Uh-huh.

25 Q. Is that yes?



1 A. Yes.

2 Q. Sorry. We've gotta clean that up for the  
3 record.

4 A. Yes.

5 (Whereupon, Deposition Exhibit No. 29,  
6 Delmonico's Menu With Where Food Comes From Logo and  
7 QR Code, was marked for identification.)

8 Q. (By Ms. Burbach) And last I am going to  
9 hand you Exhibit 29.

10 MS. BURBACH: Frank, we e-mailed this last  
11 night, and it was in the packet you received this  
12 morning. This is the very last page.

13 MR. BARRIE: Okay. Do you have the pages  
14 stamped?

15 MS. BURBACH: IMI 227.

16 MR. BARRIE: Just give me a second. Okay.  
17 I have it.

18 MS. BURBACH: Great.

19 Q. (By Ms. Burbach) Could you, Mr. Saunders,  
20 please identify what this document is.

21 A. This is a mocked-up example of the  
22 Delmonico's menu for last week which we incorporated  
23 the Where Food Comes From logo and QR code.

24 Q. Is Delmonico's going to do business with  
25 IMI?



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1           A.    Yes.  We believe so.  We don't have a  
2   signed agreement at this point, but yes, we feel very  
3   strongly that they will.

4           Q.    And is this how the mark would likely  
5   appear --

6           A.    Yeah.

7           Q.    -- on the menu if they --

8           A.    This is a very good representative example  
9   of how we would incorporate the mark and the logo into  
10  the point of purchase material for a restaurant.

11          Q.    Okay.

12                MS. BURBACH:  At this point I'd just make a  
13  motion to admit all of the evidence that we have  
14  introduced into this record during this deposition.  
15  And I am done with my line of questioning.

16                Frank, I didn't know if you had -- you  
17  wanted to cross-examine Mr. Saunders.

18                MR. BARRIE:  Yes.  I have a few questions.  
19  Let's see.  Did you want to keep rolling?

20                MS. BURBACH:  We can take a break now, it  
21  seems like a good time, or we can keep going, whatever  
22  you prefer.  I don't know how much you have.

23                MR. BARRIE:  I would say about an hour.

24                MS. BURBACH:  Okay.

25                MR. BARRIE:  Why don't we just take a



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1 ten-minute break and then we'll continue. You want to  
2 continue at noon your time, and then we'll see how it  
3 rolls? Maybe we can finish up before needing a lunch  
4 break.

5 MS. BURBACH: Sure. No problem.

6 MR. BARRIE: Okay. So we'll get rolling  
7 again in ten minutes, which would be about noon your  
8 time, right?

9 (Brief recess.)

10 CROSS EXAMINATION

11 QUESTIONS BY MR. BARRIE:

12 Q. Mr. Saunders, could you tell me who else is  
13 in the room with you right now?

14 A. Yes.

15 Q. I know the reporter, Judy Moore, and Cheryl  
16 Burbach, your attorney. Is there anyone else there?

17 A. No, sir, just the three of us.

18 Q. Okay. Now, do you have another place of  
19 business in Platte City, Missouri?

20 A. We formerly had an office that was based  
21 out of Platte City. I lived, Leann and myself, lived  
22 in the Kansas City area for approximately eight years,  
23 and our offices were located in Platte City.

24 And in April of 2006, we moved to Castle  
25 Rock, and shortly thereafter, I'm not sure of the



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1 exact timing, but within six months to eight months we  
2 had closed that office in Platte City.

3 Q. Okay. Thank you for that clarification. I  
4 had picked up that other location in looking at SEC  
5 filings.

6 A. Cool.

7 Q. And the next couple of questions relate to  
8 certain details that I discovered in looking at SEC  
9 filings. Is your largest customer still Smithfield?

10 A. No. Our -- no.

11 Q. It was your largest customer at one time?

12 A. Correct.

13 Q. And when it was a customer of your  
14 business, what did you provide to it?

15 A. For Smithfield Foods, we provided export  
16 verification. I believe it was of their pork for the  
17 European Union program. So it was a very small  
18 portion of their business. It was specifically  
19 non-hormone treated pork destined for the European  
20 Union.

21 Q. All right. What period of time were you  
22 providing them with services?

23 A. That would have been the late '90s, so I  
24 would -- this is an estimate -- I would say probably  
25 between 1997 and 2003.



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1 Q. Okay.

2 A. They were acquired by a company out of  
3 Brazil.

4 Q. Smithfield has been acquired by a company  
5 out of Brazil? Is that --

6 A. Portions of their business have been  
7 acquired. It's probably way too complicated for me to  
8 even really understand, but yes, a company out of  
9 Brazil called JBS purchased their pork division, or  
10 portions of their pork division.

11 Q. Is that when you lost that business or  
12 stopped providing services to them?

13 A. Yeah. They -- that was primarily document  
14 control, so they took that service in-house.

15 Q. Oh, document control?

16 A. Yes.

17 Q. So you were never involved with some kind  
18 of provision of the hardware that's used on individual  
19 animals?

20 A. No.

21 Q. Okay. Now, in the SEC filings, I believe I  
22 noticed these details there, it noted certain key  
23 competitors. The first one on the list was At Info  
24 Link. Is that a familiar name to you?

25 A. Yes, it is.



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1 Q. Is that a key competitor?

2 A. Less today than in the past, but within the  
3 identification and traceability of beef animals in the  
4 United States from 1996 through --

5 Q. What was that year? I'm sorry. I missed  
6 it. 1996?

7 A. Correct. Through probably the year of the  
8 discovery of mad cow in the United States, so 2003,  
9 they were one of our primary competitors, less and  
10 less so today.

11 Q. Why is it that they're less and less so  
12 today a competitor?

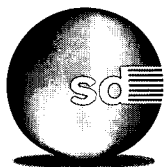
13 A. They're... What's the right way to -- I  
14 guess they're still a competitor. They're not as  
15 formidable a competitor as they were in previous  
16 times.

17 Q. Okay. And how about Micro Beef  
18 Technologies? Is that a key competitor still?

19 A. Yes. They were recently acquired, though,  
20 or they're in the process of being acquired by Animal  
21 Health Company based in Idaho. So yes, they are still  
22 a competitor, but they're now a larger -- a component  
23 of a larger business.

24 Q. What do you mean by Animal Health Company?

25 A. They sell animal health products online.



1 So it would range from obviously medicinal services,  
2 so different types of products that could be used to  
3 treat. It could be feed components, it could be stuff  
4 that's utilized to groom animals. It's a large --  
5 they sell a number of different products. I can't  
6 even -- I can't even go into all of them, but a wide  
7 array of products.

8 Q. Would that include antibiotics to be added  
9 to feed?

10 A. Yes.

11 Q. And what about Sterling Solution? Is that  
12 a key competitor still?

13 A. Yes. Yes.

14 Q. And how do they compete with you?

15 A. They provide -- they're certified through  
16 the USDA, too, so they have the same qualifications  
17 that we do to certify products, primarily beef, I  
18 believe, for export markets.

19 Q. Your company owns other intellectual  
20 property besides the two trademarks at issue in your  
21 opposition; isn't that right?

22 A. That is correct.

23 Q. And some of the other trademarks are -- one  
24 is Beef Passport; is that right?

25 A. Correct.



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1 Q. And how do you use that trademark?

2 A. We do not utilize that trademark any longer  
3 in commerce.

4 Q. How about Passport to Profitability? Is  
5 that one of your other trademarks?

6 A. Yep. And we no longer use that either.

7 Q. Then how about Grid, G-R-I-D, Max, M-A-X?

8 A. That is a service -- yes, that is a mark of  
9 ours and a service that we -- that we continue to  
10 operate, but, quite frankly, it's a small portion of  
11 our business.

12 Q. What does the Grid refer to?

13 A. The Grid is an industry-accepted term to  
14 describe the payment methods utilized by beef and pork  
15 processors to determine a grid-based method to  
16 determine the value of animals that they -- that they  
17 purchase.

18 Q. Could you try to explain that to me a  
19 little more? I'm not really understanding. It's a  
20 payment method, so the payment is going to go from who  
21 would the customer be and who would the seller be?

22 A. Yeah. Let's see. Maybe the best way to do  
23 it is to do an analogy. Let's say that you are a --  
24 you're wanting to sell a cellular phone and you're  
25 going to compare three different potential providers

1 of cellular phones, so you take that phone and you  
2 compare all three of them against each other in a  
3 grid, in a way to compartmentalize the different  
4 attributes of that phone. So are they -- what, the  
5 minutes per -- or the time per month that you're  
6 allowed to get, the cost per month, the different  
7 factors that would influence you on the purchasing  
8 decision.

9 The sale of cattle and livestock from a  
10 specific producer to the processor of those animals,  
11 in many cases producers want to evaluate those  
12 different markets. So what Grid Max did and does was  
13 provide producers a -- an informational tool, an  
14 online service to say that if you take your animals,  
15 your production, and sell it to this processor versus  
16 this processor versus this processor, the tool would  
17 tell you the most lucrative and profitable location to  
18 sell your animals based on that grid.

19 So it's not an electrical grid, it's not a  
20 power grid; it's a grid that is in turn used in the  
21 beef and pork industries to define how processors  
22 purchase those animals. Does that help?

23 Q. All right. And that's one of your  
24 trademarks, Grid Max?

25 A. Yes.



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1 Q. So you're helping producers figure out  
2 which processor they should sell to?

3 A. Correct.

4 Q. And who would be your biggest customer for  
5 that service, which provider or --

6 MS. BURBACH: Does this need to be  
7 confidential?

8 THE WITNESS: No.

9 A. Partly what I -- the typical customers with  
10 that -- and, again, this is a service we don't promote  
11 any longer. We still provide it to certain customers,  
12 but we're not promoting it. Our largest customers  
13 would be large ranches. The largest ranch that we  
14 work with --

15 THE WITNESS: I would say I don't know if  
16 this would be confidential or not, but --

17 MS. BURBACH: Well, okay, just for the  
18 record, if you need to designate something, if you  
19 don't want this to be public, you need to say that,  
20 and we'll designate it. You know better than me.

21 THE WITNESS: Yeah, this is confidential.

22 MS. BURBACH: This answer is trade secret  
23 commercially designated, so go ahead.

24

25



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Q. When you were testifying earlier on direct about your revenues and expenses, would the revenues from this part of your business have been included in those numbers?

A. No.

MS. BURBACH: Oh, and by the way, we can go off the confidential portion of this deposition for that last answer.

MR. BARRIE: Okay. Thank you, Cheryl.

MS. BURBACH: Sure.

Q. (By Mr. Barrie) Those revenues are not



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1 included -- were not included when you were noting  
2 those earlier smaller numbers, correct?

3 A. Correct.

4 Q. So just so the record's clear and my mind  
5 is clear on this point, the revenues and expenses you  
6 testified earlier relate only to this Where Food Comes  
7 From aspect of your business?

8 A. Yes. Correct.

9 Q. Okay. And your other parts of your  
10 business, what would be the largest part in terms of  
11 revenues, your remaining parts of business?

12 A. The largest part --

13 Q. My question wasn't stated very well, but I  
14 think I got the question out. In terms of your  
15 company has different aspects to its business,  
16 correct?

17 A. Correct. Yeah.

18 And if you've reviewed our reporting, our  
19 SEC documents, we've got two primary areas of revenue  
20 that we distinguish. One is what we call our U.S.  
21 verified services, which are verification services.  
22 And that would -- that would include all of the  
23 revenues generated from our auditing procedures. So  
24 when we perform an audit for a ranch, whether that  
25 audit is on site or off site, they pay for those



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1 services. Okay?

2 Q. Is that the largest part of the revenue  
3 sources?

4 A. Yes. Exactly.

5 The second part of the revenue sources are  
6 what we call hardware, and that's probably a misnomer,  
7 but the hardware are the identification tags that are  
8 used -- the ISO-compliant tags, the radiofrequency  
9 tags that are used as the Social Security number for  
10 the cattle that we -- and the livestock that we  
11 verify.

12 Q. Okay. Thank you. I had been confused. I  
13 thought those tags were used on pigs as well, but  
14 that's not true; is that right? You weren't selling  
15 those tags to Smithfield?

16 A. No. No. And, in fact, almost exclusively  
17 beef, purely because of the production differences  
18 between beef, pork and poultry. Cattle are the  
19 primary livestock utilizing identification tags.

20 Q. And could you just give me a rough number  
21 in terms of revenues from the hardware portion of your  
22 business on an annual basis? I know it's in the SEC  
23 reports, but, say, would you have the number for 2010,  
24 last year?

25 A. I do.

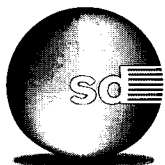


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1 MS. BURBACH: Do we need to -- oh, this is  
2 public. Never mind.

3 THE WITNESS: Yeah, it's public.  
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10 MS. BURBACH: Okay. Well, we can go back  
11 and state it.  
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Q. Oh, tags, okay.

And we'll just talk about 2010, then, since it wouldn't be confidential.

MS. BURBACH: Okay. Then we'll go ahead and take it off the confidentiality.

MR. BARRIE: Okay.

Q. (By Mr. Barrie) So the verification services from the auditing would be the difference between the 3.2 million and the 650,000 for the tags?

A. Correct.

Q. Okay. Thank you.

Then you have ownership of a few other trademarks. It won't take that long to run through. Chute Side, C-H-U-T-E, Side, is that one of your trademarks?



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1           A.    Yes.  That was -- now you're listing all my  
2 business failures here, Frank.  I don't know what --

3           MS. BURBACH:  I was like, I don't even  
4 remember that one.

5           A.    Yes.  Chute Side was a tradename that we  
6 used when I founded the company in 1995.  There was a  
7 strong movement towards a mandatory identification  
8 system in the United States for tracking livestock,  
9 primarily for disease prevention, and Chute Side was a  
10 tradename that we utilized for an application that we  
11 built that could be utilized by cattle producers to  
12 incorporate the ability to read electronic  
13 identification tags into a software application on a  
14 computer.

15          Q.    Sounds like a good idea.  It didn't fly?

16          A.    Here was the -- the real issue that we had  
17 was the support of the software.  It was a  
18 platform-based system, so it had to be loaded on a  
19 computer, and it was very difficult as a small  
20 start-up company to support customers across the  
21 country effectively.

22                And because producers are typically --  
23 what's the phrase -- cash poor and land rich, it was  
24 cost-prohibitive for most of our customers to be able  
25 to utilize the service.  So it -- we really evolved



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1 from a technology standpoint to an auditing and  
2 verification company.

3 Q. Okay. Thank you.

4 Then how about Cattle Network? Is that  
5 another trademark you own?

6 A. Cattle Network was a website that we  
7 acquired in 2005 from a group of private investors  
8 within the industry, and in 2008 we sold Cattle  
9 Network and Cattle Store, which is a misnomer. We  
10 weren't selling cattle; we were selling equipment,  
11 tags, radiofrequency ID readers, online. We sold both  
12 of those websites and those businesses to a company  
13 based in Chicago called Advance Productions. Advance,  
14 I think it's Productions. It's a media company.

15 Q. A media company?

16 A. Yeah. They -- they're similar to Penton.  
17 They own -- they're a -- they own magazines. They own  
18 a very well-known magazine in the beef industry called  
19 Drovers, but they also are very active in produce.  
20 They have magazines, periodicals, in furniture, home  
21 decor. So they were the -- they were the company --  
22 we sold those two businesses to them.

23 Q. All right. Thank you.

24 A. There's quite a bit of information on our  
25 filings on that one, too, if you want to go look at



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1 that.

2 Q. Okay. And you sold that in 2008?

3 A. Yeah. I think it's -- I'm almost positive  
4 it's 2008. I'm sorry. That was -- I didn't prepare  
5 on that one. I think it's July of 2008 is when we  
6 sold it.

7 Q. Okay. Then you have a trademark Web  
8 Integrator; is that right?

9 A. Yep.

10 Q. How do you use that?

11 A. We don't. That one has gone by the wayside  
12 as well. We utilized that initially, and that was the  
13 web version of our Chute Side software.

14 Q. And you also have a trademark for U.S.  
15 Verified; is that right?

16 A. Yes. Yes, that is accurate. And that is,  
17 again, the majority of our -- that one stuck.

18 Q. Okay. Is that used with the exported beef  
19 to Japan?

20 A. Yes.

21 Q. Yes?

22 A. Yes.

23 Q. And then also there's a trademark for IMI  
24 Global, right?

25 A. Yes. That is correct.



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1 Q. And how do you use that trademark?

2 A. That is the d/b/a that we utilize for all  
3 of our industry activities, descriptions of our  
4 business. So Integrated Management Information, when  
5 I founded the company, was the exact business name.  
6 Shortened that to IMI and then over time evolved into  
7 IMI Global as we realized that our business was more  
8 of an international -- had an international scope to  
9 it.

10 Q. Okay. Now, are you familiar with the fact  
11 that there are four giant meat packing companies that  
12 slaughter and market -- four or five -- beef cattle?  
13 Is that a correct fact?

14 A. Yes, that is a correct fact.

15 Q. Do you have any business directly with  
16 those four giant meat packing companies?

17 A. Yes, all of them.

18 Q. Okay. Would you just note their names and  
19 describe the business that you have with them?

20 THE WITNESS: Do you want to do this one  
21 confidential?

22 MS. BURBACH: It's your call.

23 THE WITNESS: I don't think we have that  
24 one...

25 MS. BURBACH: Is this confidential?



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1 THE WITNESS: Yes, that's confidential.

2 MS. BURBACH: So we're designating this  
3 trade secret, commercially sensitive information,  
4 Frank.

5 MR. BARRIE: Okay.  
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Q. Right. Let's see. Just bear with me for a second or two.

A. Sure.

Q. The next few questions relate to your earlier testimony this morning, and it's just to have something a little clearer in my mind. And the first one relates to -- oh, how many visitors per month to your website, the Wherefoodcomesfrom.com?



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1           A.    Very good question.  We -- it's been  
2 growing, but today we -- I want to -- I'm thinking  
3 back through.  I think we had 15,000 visits in  
4 October, not visitors but visits.  So the -- I'd have  
5 to go back and look at it specifically, but I want to  
6 say it's about 7,000 to 8,000 a month.

7           Q.    Okay.  Thank you.

8           A.    You bet.

9           Q.    Now, when you were...  Let's see.  I think  
10 I wrote down an exhibit number.  It was with reference  
11 to providing Where Food Comes From services to the  
12 restaurant casinos in Albuquerque.  You said there are  
13 a significant amount of restaurants?  Did you use that  
14 phrase, a significant amount of restaurants where you  
15 provide those services?  Did I hear that right?

16          A.    Yeah.  That...  Significant, I would say a  
17 dozen.

18          Q.    And that dozen, where are they located?  
19 The casino restaurants in Albuquerque and potentially  
20 the Delmonico's in New York City.  What are some of  
21 the others?

22          A.    That would be the bulk of them, those two  
23 areas.

24          Q.    Oh.  So in Albuquerque it's more than one  
25 restaurant?

1 A. Yes.

2 Q. What would they -- what are their names?

3 A. I can't give you those. I know the Sandia  
4 Casino is one, and I can't think of the restaurant in  
5 there. I can get that information, but I do not know  
6 them off the top of my head, Frank.

7 Q. Okay. But what comes to your mind now  
8 would be restaurants in either Albuquerque or New York  
9 City?

10 A. Primarily Albuquerque.

11 Q. Okay, Albuquerque. And is there any other  
12 restaurant that comes to mind in New York City --

13 A. No.

14 Q. -- besides Delmonico?

15 A. No.

16 Q. Okay. Now, on Exhibit 14, that's Page 104,  
17 let's see if we can dig that out.

18 MS. BURBACH: Exhibit 13?

19 MR. BARRIE: No. It's Exhibit 14.

20 MS. BURBACH: Oh, 14?

21 MR. BARRIE: I have a note it's Page 104.

22 MS. BURBACH: Yep. I have it. It looks  
23 like that.

24 THE WITNESS: Okay. Yep.

25 MS. BURBACH: Do you want to use my copy?



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1 There's nothing on it.

2 MR. BARRIE: I'm trying to find my copy  
3 now.

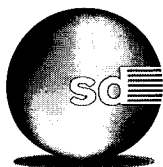
4 Q. (By Mr. Barrie) Okay. In the context of  
5 describing that document, you testified there are less  
6 than 50, it's a consolidated industry, you can target  
7 it specifically. Do you remember that?

8 A. Yes, very well.

9 Q. What did you mean by that? I didn't  
10 follow.

11 A. Well, the concept is this: The major  
12 retail -- or even the small retail companies across  
13 the country, that's a very small group of individuals.  
14 When you're talking about a product like this, meaning  
15 that we -- Safeway is a large retailer in the west.  
16 They are part of the Kroger family, I believe. They  
17 have -- I'm going off of my memory here -- I don't  
18 know the exact number, but I believe it's 300  
19 different stores in the western part of the United  
20 States, and when we communicate a service like Where  
21 Food Comes From, we are typically dealing directly  
22 with the quality control and individuals that would  
23 make decisions over all of those 300 stores.

24 So we don't go specifically to each retail  
25 location; we meet with the upper management within



1 those retail organizations. So the number of 50  
2 individuals that we've contacted and that we've spoken  
3 to and distributed this information to would cover a  
4 much broader group of retail locations.

5 Q. I see. And when you refer to the  
6 consolidated industry, do you mean -- would it be fair  
7 to say the supermarkets in the United States, now it's  
8 consolidating into a number of giant chains? Is that  
9 what you mean?

10 A. There definitely has been consolidation,  
11 but you could make that argument, too, in any specific  
12 region, Heinen's included, or Wegmans or Stew  
13 Leonard's or Lunds & Byerly's. There's a very -- we  
14 could sit here very quickly and talk about the small  
15 number of high-end retailers across the country. So,  
16 yes, I agree with you.

17 Q. Okay. But you're targeting supermarkets  
18 for this service; is that right?

19 A. That is one of our targets.

20 Q. Okay. What would the other targets be?

21 A. All food service. Any restaurant that  
22 would be interested, whether -- whether they're  
23 working with a large food distribution company or not.

24 Q. Okay. And that's a good segue to ask some  
25 questions about Sysco.



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1 MR. BARRIE: And, Cheryl, I know some of  
2 the details about Sysco are confidential; is that  
3 right?

4 MS. BURBACH: I think that the exhibit  
5 itself is confidential. If you want to ask about,  
6 like, what they're paying to the client, yeah, I would  
7 say that's probably confidential. If you ask a  
8 question, John and I will be on it, and we can let you  
9 know.

10 MR. BARRIE: Gotcha.

11 MS. BURBACH: But the fact that there's an  
12 existing relationship isn't confidential.

13 THE WITNESS: No. No.

14 MR. BARRIE: All right.

15 Q. (By Mr. Barrie) Mr. Saunders, did you know  
16 that Sysco started in Albany, New York?

17 A. I did not know that. That's very  
18 interesting.

19 Q. A very small operation on Delaware Avenue,  
20 a family-run food distributor, but it would go back  
21 many decades. And would you just note what Sysco is  
22 today on the record?

23 A. Sure. Sysco, I believe, is the largest  
24 food service distributor in the U.S., broad line.  
25 They distribute everything from meat to napkins.



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1 Q. And you were able to develop some degree of  
2 business with this distributor of food, correct?

3 A. Yes.

4 Q. And what is -- and you did testify on  
5 direct to some extent what you're providing them with,  
6 service you're providing them with. Is it primarily  
7 in the New Mexican market? Did I understand that  
8 right?

9 A. Yes, exclusively. And in the Amarillo --  
10 the Bonsmara program that I believe is an exhibit --

11 Q. Right.

12 A. -- was in both New Mexico and in Texas.  
13 And then the Branch Ranch, which is a verified  
14 customer of ours, is exclusively New Mexico, I  
15 believe.

16 Q. And are you hoping to expand your  
17 relationship with Sysco?

18 MS. BURBACH: Is this a confidential  
19 answer?

20 THE WITNESS: It probably is. Can I speak  
21 frankly?

22 MS. BURBACH: Yeah. So let's designate it  
23 trade secret, commercially sensitive. Go ahead.

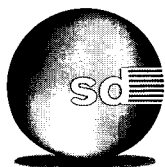
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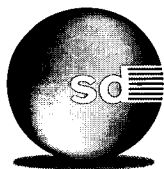
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Q. All right. So the Bonsmara New Mexico part of your business seems like it might be somewhat unique.

A. Very, in the sense that --

MS. BURBACH: And we can go back on -- no longer designating this section commercially sensitive trade secret information. Go ahead.

A. Yeah. And purely unique because of the fact that it was -- that it involved Sysco. I believe that the local branded opportunity for meat brands will continue to thrive, but the inclusion of a large broad line distributor with a whole different set of financial dynamics makes it very difficult for a program like this to succeed long-term.



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1 Q. (By Mr. Barrie) All right. Thank you.

2 A. You're welcome.

3 Q. Do you happen to have a favorite  
4 farm-to-table restaurant? Always an interesting  
5 topic.

6 A. Yes. There's a small restaurant in Denver  
7 called Dozens, which is a breakfast, brunch, no  
8 dinner, supper, and they make an effort to locally  
9 source as much of their product as they possibly can.

10 Q. It's Dozens, D-O-Z-E-N-S?

11 A. Yes. It's very good. I would recommend  
12 that you try it when you come to Denver.

13 Q. Are you familiar with the Blue Bird Bistro  
14 in Kansas City?

15 A. I am not.

16 Q. Okay. You don't happen to belong to a CSA  
17 farm?

18 A. No, although we promote one. It's a  
19 non-profit in Castle Rock called the Colorado  
20 Agricultural Leadership Foundation. And it's a  
21 non-profit that we work to source verify the food  
22 that's sold to the community in Castle Rock.

23 Q. So the Colorado Leadership Foundation farm  
24 in Castle Rock?

25 A. Yeah. It's called the Colorado



1     Agricultural Leadership Foundation. And they've got  
2     the CSA set up where the -- all of the children in the  
3     county come on site, learn more about the source of  
4     their food and then actually participate in the  
5     gardening, the planting and the harvesting and the  
6     maintenance of the gardens.

7             Q.     That's terrific. How many acres do they  
8     have under cultivation?

9             A.     10.

10            Q.     And do you know how many shareholders they  
11     have in the farm?

12            A.     I do not know that.

13            Q.     Okay. But the model would be they would  
14     seek to have shareholders, correct?

15            A.     Correct.

16            Q.     And the shareholder would pay before the  
17     season starts a certain amount of money in exchange  
18     for --

19            A.     The starts, yep. Yep.

20            Q.     That's the model for it?

21            A.     Correct.

22            Q.     And the labor on the 10 acres would be  
23     school children?

24            A.     Yes, and volunteers of the organization and  
25     then the actual owners of the plots.



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1 Q. Oh. Who would they be, the owners of the  
2 plots?

3 A. Well, the people that purchased the section  
4 of the garden where they are growing their crops. So  
5 the -- you know, the -- and I know that a lot of them  
6 they do -- there's different ways that they do them,  
7 but this one that we're engaged with, they have their  
8 own section, the family has their own section, and  
9 then they're responsible for the purchase of the  
10 starts, the planting and then the maintenance of the  
11 food or the vegetables that are grown there.

12 Q. So it's almost like a community garden  
13 aspect, too, where you would have a part of the  
14 overall cultivated land divided up among different  
15 individuals?

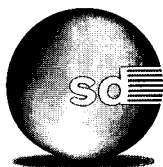
16 A. Correct.

17 Q. Okay. It is a different type of model than  
18 the one I belong to.

19 So the harvest from an individual's portion  
20 would be that individual's own food; is that right?

21 A. Yeah. That is my understanding. I  
22 could -- I could be mistaken on that, but that is my  
23 understanding.

24 Q. Okay. Are you familiar with the CSA model  
25 where it's a farmer who's growing the food and



1 producing it for shareholders -- I'll use my example,  
2 the one I belong to -- a thousand shareholders and  
3 each week the shareholders get a delivery of food from  
4 the farmer? You're familiar with that model?

5 A. Yes, sir.

6 Q. Do you know any farms like that in the  
7 Denver area, which is -- is Castle Rock part of the  
8 Denver metropolitan area? Is that right?

9 A. I would say they would include it. And,  
10 no, I do not.

11 Q. All right. Thank you.

12 Do you have a favorite farmers market?

13 A. Boulder.

14 Q. How far is that from home?

15 A. It's about -- it's about a 45-minute trip.  
16 They're on the northwest side of Denver, and we're  
17 kind of on the southeast side, so it's about -- it's  
18 about as far away in Denver as you could get. But  
19 yeah, it's -- for obvious reasons. It's a very  
20 diverse group and a lot of cool products.

21 Q. Right. And, now, when you shop at the  
22 Boulder farmers market, how do you know that the food  
23 you're buying is actually grown by the vendor?

24 A. Well, that's a very good question, and it's  
25 really where a lot of -- you know, they're actually --



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1 it's a very -- it's a very good farmers market, in  
2 that they have a lot of the specific ranchers there  
3 that are -- or farmers that are there actually selling  
4 their products, but, quite frankly, it was, again, one  
5 of the things that was very concerning to us.

6 In Castle Rock, the farmers market in  
7 Castle Rock, I didn't mention that, and a lot of  
8 our -- a lot of my perceptions about the source of  
9 origin on foods being sold in farmers markets comes  
10 from my experience specifically within what's being  
11 sold at Castle Rock and --

12 Q. Do you have the sense that some of it is  
13 resold wholesale food --

14 A. Yes.

15 Q. -- besides food that the vendor's actually  
16 grown himself or herself?

17 A. Yes, sir, that is my concern.

18 Q. But you say the Boulder farmers market you  
19 don't have that type of concern, and I'm trying to get  
20 a feeling for why that might be.

21 A. I felt better, but it...

22 Q. Would you say that it might relate to the  
23 fact that the farmer at the Boulder market is a part  
24 of the community and a known person in that community  
25 so you have some stake in his representations or her

1 representations?

2 A. Yes, but I have no way to validate that.

3 Q. Well, if they have a designation of their  
4 farm and if you're able to ask, is this where you  
5 farm, it's located where, would that give you a better  
6 feeling?

7 A. It would.

8 Q. Humans, I mean, we like to trust -- it's  
9 hard to be trusting of people in this day and age.

10 A. It's unfortunate, yep.

11 Q. I won't editorialize. I don't want to keep  
12 you on the witness chair any longer than I should.

13 MR. BARRIE: Just give me one -- just a  
14 couple of minutes. I just want to look through my  
15 notes real quickly. I don't think I have much more.

16 MS. BURBACH: Okay.

17 Q. (By Mr. Barrie) Oh, I'm going to focus a  
18 couple of questions on your wife. Her name is Leann  
19 Saunders, correct?

20 A. Yes. That is her.

21 Q. Now, I did pick up the detail in looking  
22 through the SEC reports that -- or somewhere I have it  
23 in my notes here that she did work for McDonald's  
24 Corporation as a purchasing specialist; is that right?

25 A. That is correct.



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1 Q. What type of job was that?

2 A. That -- it's interesting that you mention  
3 McDonald's. They -- first and foremost, she was in --  
4 she graduated from Colorado State and had a Master's  
5 degree in a program they called beef industry  
6 leadership. And that program led her to some of the  
7 suppliers to McDonald's, and suppliers to McDonald's  
8 being the hamburger processors, so the people that  
9 formed the beef into patties for them, which is a  
10 very, very specific process.

11 Her job in McDonald's specifically was,  
12 first, she had to work in a store. Every McDonald's  
13 corporate person has to go work in a store, which I  
14 think is great, for a month. And then beyond that,  
15 she worked directly with their head of procurement on  
16 the protein side to coordinate the supply of beef and  
17 pork that they would use for their -- for their  
18 restaurants here in the United States.

19 Q. Okay. So this was a position not too long  
20 after graduating from college?

21 A. Yes. Correct.

22 Q. Could you give me a year, a sense of a  
23 year? In the late '90s, would it be?

24 A. She graduated -- she's two years older than  
25 myself, so she would have graduated from Colorado



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1 State in 199... I was going to say '92, but it was a  
2 five-year program, so 1993 she graduated with her  
3 Master's degree, and it was her first -- first job out  
4 of college.

5 Q. Okay. And then she has appeared on a -- I  
6 think it's a television program called Market Watch?  
7 Does that ring a bell?

8 A. Yep. Yep. She's fairly regular.

9 Q. And what is that about, that program? Is  
10 it on your local -- a local access channel or --

11 A. No. That is an RFDTV. If you have Dish  
12 Network or DirectTV, it's -- I don't know the exact  
13 station, but it's the Rural Farm Delivery channel.

14 And it's based, I believe, out of Omaha.  
15 And they have -- it's a very -- it's a rural America  
16 agriculture-focused station. And Market Watch is a  
17 weekly show that talks about current topics and issues  
18 going on in the agriculture business.

19 Q. And do you recall seeing her appearance on  
20 one program where the topic was the recent movie Food,  
21 Inc.?

22 A. Yes.

23 Q. And how would you describe her -- I know  
24 this is a little bit of a hearsay, but you're husband  
25 and wife and you know each other. What was her



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1 position on that movie, Food, Inc.?

2 A. I think our mutual perception of that...  
3 What's the best way to say this? We're very familiar  
4 with the perception of the mass industrialization of  
5 food and the problems associated with that. We  
6 feel -- I would say that we would both be included in  
7 this -- that the objective of that show and that  
8 documentary was less telling the complete account of  
9 food production in the United States as opposed to  
10 scaring and motivating consumers to rebel against the  
11 factory farm concept. So we would -- and I would  
12 believe that I'm speaking for her.

13 The authenticity of food production and the  
14 story about the authenticity of food production in the  
15 United States is very, very important to us both. The  
16 fear mongering and not necessarily investigative  
17 reporting associated with specifically that show made  
18 for prime time and made for a much larger consuming  
19 audience, I think, unfairly characterizes all of beef  
20 production in the United States to something that just  
21 is not truthful. Yeah, I would say that's pretty  
22 close to the way that we would look at it.

23 Q. That the message that Food, Inc., was  
24 pushing was not truthful? Not truthful, is that what  
25 you're saying?



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1 MS. BURBACH: I'm going to object that  
2 you've mischaracterized his testimony, but go ahead  
3 and answer.

4 MR. BARRIE: Okay.

5 Q. (By Mr. Barrie) Or untruthful?

6 A. Not completely factual.

7 MS. BURBACH: I think he said the facts  
8 were untrue, not the message, but I'll let you --

9 THE WITNESS: Correct.

10 Q. (By Mr. Barrie) Could you elaborate on  
11 that, the facts were untrue but not the message? What  
12 do you mean?

13 A. Well, specifically, if you watch the --  
14 all -- first and foremost, most of the ranchers that  
15 would produce the beef featured in that program would  
16 have been characterized as factory farms, and that  
17 couldn't be any further from the truth. So the lack  
18 of information about the entire process, to me and to  
19 us, proved that it had an agenda. There was an agenda  
20 in that movie, and the fact research that went on, the  
21 actual details of it, were not accurate in its  
22 entirety.

23 Q. Okay. Do you have a position, or what  
24 would your opinion be concerning grass-raised cattle  
25 versus grain-raised cattle? Do you think one is



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1 better than the other?

2 A. No, I do not.

3 Q. Why is that?

4 A. Because I believe that's a consumer  
5 preference. Consumers would prefer many attributes  
6 about the product that they consume.

7 The reality of a beef animal is that if you  
8 put a beef animal in a pen or in a pasture, give it  
9 access to grass and to roam freely on that grass,  
10 given the opportunity, they typically reside in those  
11 areas with shade, potentially with dirt, and they  
12 would most frequently consume grains as opposed to  
13 grass.

14 So better or worse is really -- is not a  
15 question for us. It's the difference in what a  
16 consumer would like to purchase as opposed to grass  
17 fed being better than grain fed or grain fed being  
18 better than grass fed.

19 My personal preference from a taste  
20 perspective is that I prefer all natural, potentially  
21 grain fed, but it's a natural decision for me. I  
22 don't like the use of hormones, but that's a personal.  
23 But I'm not determining what consumers want.

24 Q. Okay.

25 MR. BARRIE: Just bear with me for one

1 minute. I think I'm almost there.

2 Well, thank you, Mr. Saunders. That's all  
3 the questioning I have for you.

4 THE WITNESS: You're very welcome.

5 MR. BARRIE: And thank you, Cheryl.

6 MS. BURBACH: Well, Frank, actually, I just  
7 have a few questions on redirect.

8 MR. BARRIE: Okay. Go right ahead.

9 MS. BURBACH: All right. Great.

10 REDIRECT EXAMINATION

11 QUESTIONS BY MS. BURBACH:

12 Q. Earlier when you were answering  
13 Mr. Barrie's questions, you talked about the fact that  
14 the restaurants you're currently working with with the  
15 Where Food Comes From program are primarily in  
16 Albuquerque, right?

17 A. Correct.

18 Q. Do you have an understanding that your  
19 Federal registration gives you the right to use your  
20 trademark throughout the United States?

21 A. Yes.

22 Q. And do you have any intention to expand  
23 your use of the Where Food Comes From program with  
24 restaurants out of Albuquerque, New Mexico?

25 A. Most definitely.



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1 Q. Are you promoting it currently outside of  
2 Albuquerque, New Mexico?

3 A. Yes.

4 Q. Another question I just wanted to follow up  
5 on was, Mr. Barrie was asking you about who you target  
6 to do business with, and I believe you talked about  
7 restaurants and supermarkets?

8 A. Uh-huh.

9 Q. Is there any reason why a one op store  
10 would not be able to do business with you under the  
11 Where Food Comes From program?

12 A. No, not at all.

13 Q. Are you also targeting those individually  
14 owned stores to do business with?

15 A. Yes.

16 MS. BURBACH: That's all I have. Do you  
17 have anything else, Frank?

18 MR. BARRIE: You know, I just -- thank you  
19 for asking. It's not really a recross. It's just  
20 something I forgot to ask the first time.

21 MS. BURBACH: That's all right.

22 RECROSS EXAMINATION

23 QUESTIONS BY MR. BARRIE:

24 Q. And that concerns the trademark with the  
25 tree image with the words "Where Food Comes From



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1 Verified" and the registration. It's Page 55. The  
2 registration notes "No claim is made to the exclusive  
3 right to use Where Food Comes From Verified apart from  
4 the mark as shown." Do you see that on Page 55,  
5 Mr. Saunders?

6 A. I do.

7 Q. Do you understand that you -- it's not an  
8 exclusive right?

9 MS. BURBACH: I'm going to object to the  
10 characterization of the question, but you can answer.

11 Q. (By Mr. Barrie) Well, it uses the word --  
12 those words. This registration has a limitation on  
13 it, doesn't it?

14 A. I don't know.

15 Q. Okay. Well, that's fair. It's almost a  
16 legal issue.

17 MR. BARRIE: Okay. That's all right. I  
18 don't have any further questions. Thank you, Cheryl.  
19 Thank you, Mr. Saunders. And, Judy Moore, thank you.

20 MS. BURBACH: Let's go off the record for  
21 just a minute. I think we're done now. Thanks.

22 (Deposition concluded at 1:00 p.m.)  
23  
24  
25



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## ERRATA SHEET

IN RE: INTEGRATED MANAGEMENT INFORMATION, INC. vs.

FRANK BARRIE  
DEPOSITION OF: JOHN SAUNDERS

| PAGE/LINE<br>NO. | CORRECTION | REASON FOR CHANGE |
|------------------|------------|-------------------|
|------------------|------------|-------------------|

\_\_\_\_\_

\_\_\_\_\_

[illegible]

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\_\_\_\_\_

245

           I Certify that I have read my deposition in  
the above case and I request that no changes be made.  
           I Certify that I have read my deposition in  
the above case and I request that the above changes be  
made.

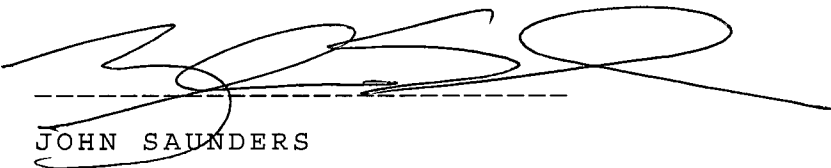
SIGNATURE OF DEPONENT:

DATED :

ENT: 1050  
12/13/11



1 I, JOHN SAUNDERS, do hereby state that I  
2 have read the foregoing questions and answers in the  
3 transcript of my deposition, Page 4 through and  
4 including Page 148, and that this is a true and  
5 accurate (corrected) report of said answers given in  
6 response to the questions propounded and appearing  
7 herein.

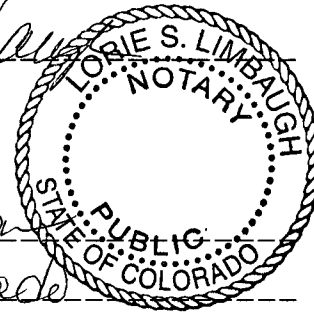
8  
9  
10   
11 JOHN SAUNDERS  
12

13 Subscribed and Sworn to before me this  
14 13 day of December, 2011.  
15

16  
17  
18   
19 Notary Public  
20

21 County of Douglas

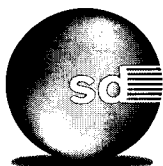
22 State of Colorado



23 Com ex 4/7/13  
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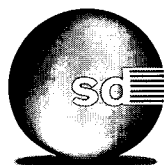
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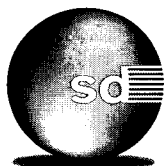


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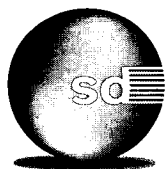
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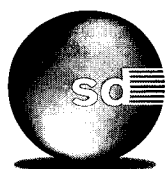


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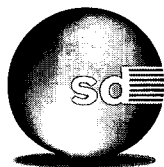
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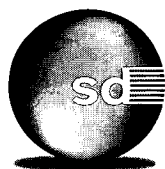
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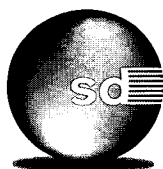


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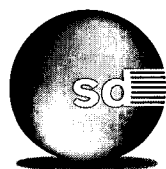
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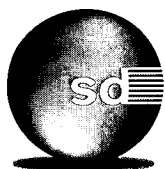
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|                                                                                                                                                            |                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                                                 |
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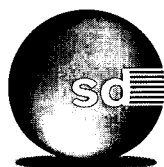
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## C E R T I F I C A T E

I, JUDY K. MOORE, a certified court reporter  
of the State of Kansas, do hereby certify:

That prior to being examined the witness was  
by me duly sworn;

That said deposition was taken down by me in  
shorthand at the time and place hereinbefore stated  
and was thereafter reduced to writing under my  
direction;

That I am not a relative or employee or  
attorney or counsel of any of the parties, or a  
relative or employee of such attorney or counsel or  
financially interested in the action.

WITNESS my hand and seal this 7<sup>th</sup> day  
of December, 2011.

Judy K. Moore  
JUDY K. MOORE, CSR #1201



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